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A Public Hearing,  
of the  
ASSEMBLY INTERIM COMMITTEE  
ON  
CRIMINAL PROCEDURE

POLICE PROCEDURES AND LAWS OF ARREST,

Sacramento, California

December 13, 14, 1961

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John A. O'Connell  
Chairman

## TABLE OF CONTENTS

PAGE NO.

### Morning Session, December 13, 1961:

Call to order by Chairman O'Connell . . . . . 1

#### Witnesses:

Douglas R. Greer, Attorney, Sacramento, California . . . 1  
 Bartley W. Cavanaugh, City Manager, Sacramento, California 21

#### Recess

### Afternoon Session, December 13, 1961:

#### Witnesses:

G. Brooks Ice, Attorney at Law, San Mateo, California 35

#### Recess

### Morning Session, December 14, 1961:

Norman Smith, California Director, Agricultural Workers  
 Organizing Committee of the AFL-CIO . . . . . 54  
 J. F. Coakley, District Attorney, County of Alameda . . . 66  
 Ed Meese, Deputy District Attorney, County of Alameda . . 80

#### Recess

### Afternoon Session, December 14, 1961:

#### Witnesses:

Edward L. Davenport, Chief Deputy Attorney, Los Angeles . . 93  
 Everett M. Glenn, City Attorney, City of Sacramento . . . 100  
 Gregory F. Stout, Criminal Defense Attorney, San Francisco 105  
 Coleman Blease, Representative, Southern California Branch  
 American Civil Liberties Union . . . . . 119  
 Larry Waldt, Captain, Sheriff's Department, County of  
 Alameda and Chairman, Professionalization Committee, Peace  
 Officers' Research Association of California . . . . . 127  
 Nathaniel Colley, Attorney at Law, Sacramento, Chairman,  
 Regional Legal Committee, NAACP . . . . . 130  
 Robert O. Fort, California State Sheriffs Association,  
 Peace Officers Association of California . . . . . 133

#### Adjournment



# LEGEND

For greater clarity the following punctuation plan has been used throughout the body of the transcript:

- one dash indicates self-interruption by speaker.
- two dashes, in addition to their normal usage, indicate interruption by another person.
- ... indicates that the speaker failed to finish a sentence. This symbol, as used in this transcript, is NOT an ellipsis and does not imply any omission of testimony.
- \*\*\* indicates an unintelligible portion on record of hearing.

A public hearing of the Assembly Interim Committee on Criminal Procedure, was convened at 10:00 A.M., Wednesday, December 13, 1961, in Room 2170 of the State Capitol, Sacramento, California. Assemblyman John A. O'Connell, Chairman, presiding.

CHAIRMAN O'CONNELL: We will come to order - we do not quite have a quorum as yet but I understand that there are quite a number of - that twelve out of the thirteen members of the committee are known to be in town or have promised that they would be here and I think that we might just as well go ahead with the taking of some testimony here this morning.

This committee hearing was called as a part of what the committee feels is its continuing responsibility to look into the laws of arrest and police procedures generally and because of that we haven't attempted to define very narrowly the scope of the subject matter that we want to go into. I have informed those who have asked me that we want to hear from people who are interested in our arrest laws and police procedures from the standpoint of law enforcement and from the standpoint of the public, as to what, if anything, has developed since the last time we had such a hearing which would indicate the necessity or the desirability for any changes of any kind in our present laws. We had hoped this morning to have the public defender of Sacramento County but just yesterday we were informed that he would be unable to be with us and this afternoon we had hoped to have the District Attorney of Sacramento County and found just yesterday that he was stricken with appendicitis so we will have only four scheduled witnesses for today. If there is anyone else who would like to testify about anything within the purview of the subject of police procedures and laws of arrest, if he would just inform me we will be glad to accommodate him because we will have plenty of time to hear witnesses today. The first witness I would like to call will be Mr. Douglas Greer, an attorney from Sacramento.

All right, Mr. Greer, will you just identify yourself for the record and -

DOUGLAS R. GREER: Yes. I am Douglas Greer, practicing attorney in the city of Sacramento.

CHAIRMAN O'CONNELL: Do you have a statement?

DOUGLAS R. GREER: I do not have a prepared statement. My remarks will be --

CHAIRMAN O'CONNELL: All right, fine, just go ahead.

DOUGLAS R. GREER: My principal remarks will be --

CHAIRMAN O'CONNELL: Oh, excuse me, let me introduce the members of the committee to those in the audience who may not know

everyone. Starting at my extreme left, Chet Wolfrum from Los Angeles, Lou Francis from San Mateo, Howard Thelin from Glendale, John Knox from Richmond and on my right, Vernon Kilpatrick from Lynwood, Maxine Moore, the committee secretary and Pamela Thompson, the committee consultant. Now go ahead Mr. Greer, I am sorry to have interrupted you.

DOUGLAS R. GREER: That's all right. My principal remarks will be addressed to the subject you mentioned, Mr. O'Connell and that is the matter of laws of arrest and how they have been changed by the more recent legislation. I have read the minutes of the last two meetings or committee hearings, interim committee hearings held on this subject --

CHAIRMAN O'CONNELL: Would you speak up a little Mr. Greer, we're having a little trouble - maybe if you would pull that microphone a little closer.

DOUGLAS R. GREER: Thank you. I know the degree and extent to which this interim committee studied the problem before it enacted the laws of 1957. As we know the power of the various police agencies of this state in the field of making arrests has been greatly expanded. Now, of course there are two sides to this. My practice has been confined in criminal law to the defense of people accused of crime and naturally I would lean towards the defendant in any criminal case.

There are two very flagrant situations that have occurred here in Sacramento in the recent past and we could confine it to both of those cases, not so much to the question of whether or not the man was ultimately liable or guilty or innocent but the method by which he was arrested. The first one points up, I think, one of the inequities of the broadening of the power of the police department to make arrests. I only cite this specific case because I think it's a situation that occurs throughout the state. That's where the police department having previously arrested a man for vagrancy and the man was a known vagrant in the city of Sacramento, was approached one morning; the man was doing nothing but walking down the street. They had him put his hands up and of course the search revealed a weapon which was an illegal blade knife. He was taken in and booked. The natural objections to this type of arrest and the fruits of such an unlawful arrest were made in a court when the man was tried. The court was convinced that the Coverstone case, which has been codified in the penal code now, was the law that should apply. The court also fell back on Section 836 of Section 1, of which I am sure you are all familiar, and said that this penal code section gave ample power to the police officer to merely walk up to a man and ask him to raise his hands and search him and if contraband is found, the fruits of that search became legal because an officer in his own subjective discretion as a reasonable man, had reasonable cause to believe the person arrested had committed a public offense in his presence.

This I believe is - points up the inequity of the Legislature, through wisdom of its own, having codified into the code the rule of the Coverstone vs. Davis case.



CHAIRMAN O'CONNELL: Well, now wasn't - prior to the 1961 amendment to 647, the Coverstone case was the law, was it not?

DOUGLAS R. GREER: Yes, it was. It has been the law since about 1952.

CHAIRMAN O'CONNELL: Yes, and did the 1961 change affect that situation in your opinion?

DOUGLAS R. GREER: Well, now you mentioned a new code section, 647 and of course I --

CHAIRMAN O'CONNELL: Well, this is the section that, the only section that would justify the arrest in the first place, isn't it? Under the circumstances that you described --

DOUGLAS R. GREER: No, it would not, sir, not in my opinion. 836 subsection 1 was the section under which the officer claimed to be operating and it was the section which the judge held was the proper section to justify this arrest and 647 was not the section relied upon. I am not sure which subsection of 647 you were referring to.

CHAIRMAN O'CONNELL: 647 (e).

DOUGLAS R. GREER: 647 (e). The point is, Mr. O'Connell, these facts were not used by the officer on cross-examination. The officer did not rely upon 647 (e) as a basis for his arrest or his search. It wasn't that the man was loitering or wandering and it wasn't that he refused to identify himself. It was that he had reasonable cause to believe that this man was committing a misdemeanor in his presence and that was what he testified to. He didn't rely upon 647 (e).

ASSEMBLYMAN KNOX: What were the reasons that he gave on cross-examination? Why did he have - other than the fact that the man had a record and he knew it?

DOUGLAS R. GREER: He was a known vagrant in the west end of Sacramento and it was just a matter of a shakedown, that's what it was.

CHAIRMAN O'CONNELL: When did this happen?

DOUGLAS R. GREER: This happened about 8 or 9 months ago.

CHAIRMAN O'CONNELL: That was under the old 647.

DOUGLAS R. GREER: But 647 again was not the basis for arrest Mr. O'Connell, you keep referring to --

CHAIRMAN O'CONNELL: It was the basis for reasonable cause under 836.

DOUGLAS R. GREER: 836 yes. This shows the --

CHAIRMAN O'CONNELL: That wouldn't -- with the 1961 change in 647 it seems to me that -- the reasonable cause under 836 would have to come from some independent circumstance other than, for example, known vagrancy.

DOUGLAS R. GREER: Yes, I agree with you sir. Now if I may move to the section that you have been mentioning, 647 subsection e, in the early weeks of November, last month, a young fellow here in Sacramento was standing in front of his home. I should say his rented apartment. He lived upstairs. It was about 1:30 in the morning and as he was standing there talking to a friend of his at the bottom of the stairs leading to his apartment, a squad car pulled around. Again, this is just an example of how the law works. A squad car pulled around and shined the spotlight on him. The young man, being a Sacramento City College student and knowing that he had done nothing, proceeded on up the stairs. The officer followed him up and the young man went into his apartment, the officer followed him in. The young man then being misguided as to how to handle himself in a situation like that asked the officer to leave - he had no right to be in his apartment without a search warrant. The officer told him he was going to take him down unless he identified himself. He said "Well, I have a key to the apartment and this is my apartment". This didn't satisfy the officer so he immediately effected an arrest in the man's apartment and took him down to the Sacramento Police Department where he was booked.

The next morning he was taken before the judge and granted some type of leniency -- if he would plead guilty they would just give him a suspended sentence. So the young man now has a conviction for loitering and failing to identify or refusing to identify himself in his own apartment house, committing no crime, having pleaded guilty to it, now he has a record of loitering in his own apartment. This is the limits to which this law can go by constantly enhancing or broadening the police powers. I am not unaware of the problems the police department has. I was an undercover agent for the State of California for approximately a year and we never had to make false arrests and we had to get our evidence. But we didn't just use the route which these sections now seem to allow.

There is another serious, and I will close with the last point, another serious matter that I think the committee should give further study to because I know they have already given some and that is, it renders it almost impossible for a citizen who has been the victim of a false arrest to seek any type of civil redress where an officer has this broad discretionary power in the first instance to effect an arrest under the highly broadened powers and then when we look to section 834 (a) dealing with the matter of resistance to arrest, cutting down the citizen's right to resist an unlawful arrest or if he does it's at jeopardy provided in these sections. Looking to 835 of the penal code, "The Method of Making Arrests and the Amount of Resistance" and "The Use of Force to Effect An Arrest" in 835 (a), all of this means that if an officer has in the first instance this broad discretion merely to say, "You are under arrest because I think you have done something", then there is no right left to the private citizen to resist an unlawful arrest. It converts every arrest into a lawful



arrest. It would make just about impossible a civil action for false arrest, for false imprisonment or for assault and battery or for any of the other tortious conduct which might have previously existed. It's the feeling of many men in the defense field that the broadening of these powers has really given the right to police departments to relax their investigation rights. It derogates from the original concept of the warrant for arrest and brings in something new where a warrant is rarely if ever necessary. Without waving the flag too much, I think we will recall that the original concept was that arrest should be made on warrants and non-warrant arrests should be the exception. I think that we have reached the point now where non-warrant arrests are the rule and the warrant will be the real exception, possibly reserving searches and seizures in private properties.

CHAIRMAN O'CONNELL: Don't you think we had reached that point some years ago in this state where the arrest with the warrant became the exception rather than the rule?

DOUGLAS R. GREER: Yes, and now I think we have dignified it with almost making the warrant unnecessary in the arrest of a person. I am speaking now of a far more numerous type of arrest for misdemeanors rather than arrests for felonies. There is no quarrel with arrests for a felony where it has been committed in the presence of an officer or reasonable grounds to suspect that it has been committed, even out of the presence of an officer. But the misdemeanor arrests account for the great bulk of the arrests in this state, I think, and nationwide also. For that reason I would like to see the Legislature give greater protection to those people who could be the most numerous victims of arrests. There are other instances of course that could be cited but I am not the repository of statistics and although they might be available, I think there are others here who have them at their fingertips and might present them to you. I know in your last meeting down in San Francisco, figures were cited to you when you were considering the change of the vagrancy law and the "thousand dollar vag" as it was called down there. I know that you were well aware of the abuses that took place in that situation and your legislation has corrected that a great per cent and the police department down there has policed itself.

I think too, and I'm not going to go into it, that the matter of police brutality is the subject I think of a very special hearing by an interim committee. It has reached such proportions in Northern California - I just left Los Angeles two weeks ago - it has reached such drastic proportions down there that some of the citizens are actually afraid for their own safety, where the local police are involved. The citizens of this state are just not protected when it comes to seeking redress against police brutality. I know Mr. O'Connell, you are well aware of this situation and I assume that some of the other members are also. I think this would be a legitimate subject for a special study. You can't do it in a case where you're shotgunning the entire police procedure. But I have been quite active in matters of police brutality and talked with people all over the state, including Chiefs of Police throughout the state and it's strange that some cities as Monterey, for example, and I talked with the Chief of Police down there about two months ago, they rarely have such a charge made against

them because of their philosophy and their approach to people who might otherwise become obstreperous.

This would be a very serious subject for this committee to undertake because many people are being injured, especially in the southern part of the state and as we know, their rights of civil redress are just about negligible as was so ably stated in the Cahan case by one of the justices, it's just too expensive, therefore some type of administrative penalty should be imposed by the Legislature. I believe it was suggested to your committee in 1959 that six months loss of salary by an officer found guilty of that would be more of a deterrent to that type of activity than even a three or four month jail sentence. If there are no questions, I'm through.

CHAIRMAN O'CONNELL: I think there are some questions, Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Mr. Greer, you have mentioned some cases of police brutality in the southern part of the state as well as throughout the state. Do you have specific instances involving specific departments that you would care to give this committee?

DOUGLAS R. GREER: You're speaking of Los Angeles now? I would rather leave that to the men down there, particularly the lawyers down there who are far better acquainted with the facts than I am. I just heard it conversationally. But I did attend a conference in Los Angeles in the early part of November where police brutality was the subject of great discussion and there were lawyers there who were handling such cases. I would rather leave the Southern California details to the boys in Southern California.

ASSEMBLYMAN WOLFRUM: Well, let's get specific about the northern part of the state then.

DOUGLAS R. GREER: Yes, now in what particular did you want to know about?

ASSEMBLYMAN WOLFRUM: I want to know about some of the cases of brutality, police brutality that you have mentioned. I would like to have the dates and the officers involved and the departments involved and the people involved so that we can get both sides of this issue before the committee.

DOUGLAS R. GREER: I believe if you will consult with Mrs. Pamela Thompson, she has affidavits signed by certain people that were submitted to this committee as long as two years ago. Is that right, Mrs. Thompson? And although I didn't come prepared with them, Mrs. Thompson has a full running account of the matters that I had in mind when I mentioned it this morning. She doesn't have the more recent ones of course, but she does have what I think is sufficient for this committee to undertake a thorough study. In fact, I thought she had enough for the committee to undertake a study two years ago.

ASSEMBLYMAN WOLFRUM: Then the information that you have is largely based on hearsay, Mr. Greer.

DOUGLAS R. GREER: No, it is not hearsay, except sir, that rarely is the defense attorney present when a policeman is beating his client. Other than that I have to rely upon my client's as well as the affidavits of eye witness citizens in Sacramento.

ASSEMBLYMAN WOLFRUM: You practice law here in Sacramento?

DOUGLAS R. GREER: Yes I do.

ASSEMBLYMAN WOLFRUM: Do you have specific cases in Sacramento that you care to give to this committee?

DOUGLAS R. GREER: I have already done that Mr. Wolfrum, a year and a half, two years ago.

ASSEMBLYMAN WOLFRUM: Do you have anything more recent than that?

DOUGLAS R. GREER: Only cases that have come to my attention in my office which I felt were such that they could not be proved. There is a - are you an attorney Mr. Wolfrum, I don't know, sir? You're not, sir? Well, even so you can imagine, I'm sure, the difficulty of proving a police brutality case where the alleged acts take place in a back room of the police department or in the elevator of the police department. The defense man is hard put to come up with proof that might even convince you Mr. Wolfrum and in some instances it may not convince me, but the physical injuries are there, the man wasn't injured when he went into police custody, he was injured when he came out and we have a pattern of how these accidents happen as reported by the authorities. Several cases have been tried here in this town by other attorneys for police brutality. The juries are not disposed to convicting a police officer. Somehow or other, they enjoy an immunity for the alleged acts that they have done and so evidence is a very difficult thing to garner. It's just almost impossible because usually the defendant, the injured prisoner is in the exclusive custody of the authorities and there is no way to prove. You can only show it by circumstantial evidence. This, of course, was sufficient in the Abbott case, but is rarely sufficient in a police brutality case.

ASSEMBLYMAN WOLFRUM: The one Sacramento case that you had here that I recall, I think it occurred during the session. There were some convictions in that case weren't there? Involving some Deputy Sheriffs in this vicinity?

DOUGLAS R. GREER: You're thinking of the Archer case?

ASSEMBLYMAN WOLFRUM: I believe that was the one.

DOUGLAS R. GREER: Not to my knowledge, Mr. Archer was found guilty.



ASSEMBLYMAN WOLFRUM: I'm not sure of the name of it.

CHAIRMAN O'CONNELL: That was the case where --

DOUGLAS R. GREER: Out in the Folsom area.

CHAIRMAN O'CONNELL: Yes and there were several deputies indicted or complaint filed alleging brutality and there was an acquittal in every instance, was there not?

DOUGLAS R. GREER: Yes, that's right, as I recall. I'm not unaware of the hazards of the policeman. As I say, I have been exposed to them myself and this morning on the radio, the young deputy sheriff here in Sacramento County who was shot yesterday and died in the hospital. I am aware of the dangers that go along in police work.

ASSEMBLYMAN WOLFRUM: You suggest, for example, that they change the law in terms of resistance to an unlawful arrest. Would you agree that in many cases we don't know whether it's a lawful arrest until it hits the Supreme Court?

DOUGLAS R. GREER: I don't think so. I don't think we have to wait quite that long to find out whether an arrest is lawful or not. I accept the spirit in which you say that Mr. Wolfrum, the final arbiter of an arrest would be, of course, the United States Supreme Court as a matter of fact.

ASSEMBLYMAN WOLFRUM: And certainly you're expecting a police officer to assume his judgment in a split second as to whether or not he has lawful arrest in a great many cases.

DOUGLAS R. GREER: This can be done in many cases.

ASSEMBLYMAN WOLFRUM: I agree that it can but there are others where it can't. You're saying that the citizen can make a better judgment than the officer who, theoretically at least, is trained in the laws of arrest.

DOUGLAS R. GREER: We know many times, Mr. Wolfrum, that police officers arrest not because they honestly believe that the defendant has committed a misdemeanor in his presence or any crime, but he is picked up many times for investigation. This is a convenient method of holding a person until you can check him out. Well now, I don't believe that we should facilitate police investigation to this degree, at the cost and jeopardy of a private citizen's being incarcerated and then if the check-out doesn't reveal anything or he is not wanted by CII or FBI or any other police department and then the easy expedient of erasing the word "arrest" and inserting the word "detention" and letting the man go home. This converts an unlawful arrest into a detention and it's significant too that many times in these situations, they ask the defendant or the arrested person to sign a waiver of any false arrest or false imprisonment action against them.

ASSEMBLYMAN WOLFRUM: On the grounds of probable cause.

DOUGLAS R. GREER: Yes.

CHAIRMAN O'CONNELL: Is it customary in Sacramento to your knowledge, for this waiver --

DOUGLAS R. GREER: Just how extensive it is, Mr. O'Connell, I cannot say, but I have heard of it. I would say in the last three years, I've heard of it five or six times from clients of mine or clients of other attorneys. Or that they have been asked to sign waivers, but I have no statistics on it. It's a very difficult thing to know how many times this is being done in the police department.

CHAIRMAN O'CONNELL: You've heard it said, I'm sure, -- we all have in the last few months, particularly -- that throughout the state there seems to be growing lack of respect for the law. And that in many cases, spectators to an arrest will deride the arresting officer and even in some cases attempt to assist the arrested person to escape.

DOUGLAS R. GREER: Particularly true in New York. Yes.

CHAIRMAN O'CONNELL: Well, I think I've read about it more recently in California, in San Francisco even. And I'm wondering if you have any opinion (1) as to whether it is a fact that there is this growing lack of respect for the law.

DOUGLAS R. GREER: I think there is.

CHAIRMAN O'CONNELL: (2) if that's so, what are the causes for it?

DOUGLAS R. GREER: I think that, perhaps, the sociologists are better equipped in this field than I, but I will hazard my opinion based upon what I've seen and what I have read. There is a general decline of course, in the post-war babies who are reaching some degree of maturity, now and, thus, the rash of juvenile delinquency. It has laid at the doorstep of the war years -- the war production years -- when children were born. To what extent this has validity, I don't know. I think, too, that there is a general decline in law and order throughout the state, in all areas. I regret to say that what you've pointed out is very often true in cases of minority citizens of our state and throughout the country. Perhaps, some small measure of it can be accounted for by the reports we hear about the Chicago police department and the shakedown cases they've had in Reno, Nevada, their police department and more recently the Denver, Colorado, police department. To what extent this brings about a disrespect for law enforcement, I don't know. But, perhaps, it's a composite of many things and this would be the only answer I would have.

ASSEMBLYMAN KILPATRICK: I wonder if the audience can hear the witness. What would seem to me - to speak up a little bit.



DOUGLAS R. GREER: All right.

CHAIRMAN O'CONNELL: I don't think they can hear you, Mr. Kilpatrick. I don't seem to be able to find a light for you over there.

DOUGLAS R. GREER: Is there more volume on this mike?

CHAIRMAN O'CONNELL: No, I don't see any volume control. They seem to be able to hear all right from back of the room.

Do you think that this loss of respect for the police, if there is any marked trend in that direction, might be due to the brutality, the rousting techniques, occasionally employed by some police, particularly as applied to minority groups? It seems to me that this is a possibility, that if, let's say, in a certain area of a city, the police are known to arrest -- make arrests indiscriminately to use more force than necessary in effecting arrests, and that sort of thing, that, in that kind of neighborhood, the word would be out and that the inhabitants of that neighborhood might react in a way which would exhibit this disrespect?

DOUGLAS R. GREER: I think it would be a very human reaction where a particular geographical area within a city -- You may have reference to the San Francisco area and that \$1,000 bracket again...

CHAIRMAN O'CONNELL: I'm thinking of, not particularly of San Francisco, but any large city, where we do have a concentration in a particular neighborhood of minority groups and perhaps a higher incidence of crime in that neighborhood.

DOUGLAS R. GREER: I think it's an inevitable human reaction where a certain neighborhood is receiving a special type of treatment, by special I mean not necessarily warranted by the crime factors or sometimes were warranted. I think that the normal reaction would be for an area or a group of people to become first apathetic to cooperating with police officers and then eventually, then possibly, hostile towards them. Now, mind you, certain areas, I'll confess are high crime areas and perhaps, they do need and justifiably need more police attention and they undoubtedly get it.

And the matter of apprehending a criminal is one thing, but how he is treated once he is taken into custody is an entirely different thing. Whether or not he is taken in on a \$525 bond and bail or whether his bail becomes \$1,000 or \$1,500. Whether they load up on him or whether they just confine the charges to one charge -- vagrancy or petty theft, or sometimes he has to make bail on four, five and six different charges which couldn't conceivably be supported in a criminal court. But he has to make bail on those charges, if he wants to get out of jail. The method of handling a person after he comes into the custody of the police officers is a very important subject. And when certain groups of people realize that they are coming up having

to make \$3,500 and \$4,000 worth of bail because they are picked up for one offense and other people are making only a \$525 bail, they begin to realize that they are the subjects of special treatment, and I don't see how this all goes well for respect for police departments.

CHAIRMAN O'CONNELL: You think that police departments could make more liberal use of the citation procedures that we have?

DOUGLAS R. GREER: Yes, I do and I wish that were done, Mr. O'Connell. There are certain petty type of misdemeanors which could be handled much as a traffic matter would be handled. We don't take every person to jail and book them because they have broken a traffic law, we let them sign a promise to appear and it would seem that if this police officer, given the authority he has been under the recent changes of the Penal Code, could also be given a certain discretion not to arrest a person if he produces a drivers license, sufficient credit cards or a social security card or something of that nature. Where a man looks like he is a resident of the city, he could be given a citation and let him sign a promise to appear much as he would do as if he went through a red light, and on the less serious misdemeanor charges, rather than having the man disrupted from his family life. It's a great emotional shock for some people; I've seen men cry when they've been arrested the first time. Having to make bail, sometimes jeopardizing their job which would only throw their large families back on county welfare. And then we would have another problem. It would seem that the citation method could be used. Wouldn't have to build such large jails, either.

CHAIRMAN O'CONNELL: You know whether or not the citation procedure is used in this county for other than traffic offenses.

DOUGLAS R. GREER: To my knowledge, I don't know whether or not that it is used. I know in jaywalking situations you can sign a promise to appear. Where it's not a vehicle situation -- you just jaywalk and they'll give you a ticket. And there are crimes of that nature which are so petty we call them parking meter level crimes, and they don't even ask you to appear. They just put it on your windshield because the Legislature has said so. And this automatically requires you to appear and take care of this parking citation even though you don't know of it until you get back to your car. I think the citation method could be used to great advantage. It might dispel some of the hostility that arises from arrests that are highly equivocal.

ASSEMBLYMAN KNOX: It was obviously the intention of the changes in Section 647 to cause an arrest only for an act instead of the status of a person. He has to actually do something. Do you feel that the law of arrest, the way it's written now, to some extent, negates the purpose of this 1961 amendment to Section 647?

DOUGLAS R. GREER: Yes. I was pleased with the 647 amendment where you took out the status violation and made it a specific act required. I was happy with that, but I think that, again the other sections -- the 800 series, 833, 36 and companion sections have made it

too subjective for the police officer in cases where, as I say, he is not really convinced the person has committed a crime, he wants to pick him up for investigation.

ASSEMBLYMAN KNOX: Well, the law of arrest in California prior to 1957 was essentially the common law, was it not, that the misdemeanor committed in the presence of the officer, a felony having been committed and reasonable suspicion that that person had committed it? That was the common law that came from England and that was the law of the state prior to 1957, wasn't it? Then that was, of course, changed in 1957 and so that it's something else now.

DOUGLAS R. GREER: That's right. But you see, what we haven't discussed yet and perhaps others will, is the matter of evidence. If you have this low threshold for arrest, then any item found on an arrested person is the fruits of a lawful arrest. And it just opens the door to all types of unlawful arrest, unlawful search and seizure and, of course, will go right down the line as you probably noticed in the recent decisions, they go right down the line. They have emasculated Cahan to a certain degree because anything can come in under the guise of lawful arrest. They have even made a -- almost made finding a knife or a dangerous weapon on a person -- you give an officer carte blanche to go up and check a man out for a dangerous weapon.

ASSEMBLYMAN KNOX: Well, in your experience, is it really possible for an officer to make a false arrest?

DOUGLAS R. GREER: I don't think it is. I think...

ASSEMBLYMAN KNOX: In other words, an officer can just stop somebody walking down the street and search him?

DOUGLAS R. GREER: I'd like to say this. Officers are human beings and there are some darn good human beings and some darn bad ones. But it would take a rather unimaginative police officer that would make a false arrest that, when he had to justify that arrest in court that he couldn't think of sufficient circumstances to support it.

ASSEMBLYMAN KNOX: In other words, he could kind of reason backwards from what he found to what he thought he would find?

DOUGLAS R. GREER: That's right, and if he were a rookie, he could be well advised by some more experienced men.

ASSEMBLYMAN KNOX: Thank you.

ASSEMBLYMAN THELIN: Well, Mr. Greer, I'm a little confused as to really what happened in 1957, in view of your answer to some of the questions here today. Now, I thought in answer to Mr. O'Connell's questions, that you agreed that in 1957 we simply codified what was already case law. And yet, in answer to Mr. Knox's questions, you seem to indicate that prior to the changes in 1957 in our statutes, we were simply operating under the old common law, relative to arrests.



DOUGLAS R. GREER: No, the Legislature in 1957 codified the cases in 1952, the Coverstone vs. Davis case. However, this is where the confusion logically lies too, Mr. Thelin --

ASSEMBLYMAN THELIN: Well, is it your position that in 1957 the Legislature did enact new law rather than simply codifying the existing case law relative to arrests?

DOUGLAS R. GREER: Well, it isn't so much a matter of contention as it is a matter of record, Mr. Thelin, that certain statutes were added in 1957 and if I contended against it, the record would show that I would be wrong, so certain statutes were added --

ASSEMBLYMAN THELIN: Well you're saying these statutes that were added in 1957 however, they did more than simply put into our code what was already case law - this is what happened.

DOUGLAS R. GREER: That is right, sir. You see, the Coverstone case was a civil case, it was not a criminal case and if it had not been codified and put into the penal code, it's entirely possible that the courts would have confined it to the facts upon which it was based. But the Legislature took the Coverstone case out of a civil decision and wrote it into a penal code and thereby brought in certain arrest innovations which did not exist in the law prior to that time. It brought in this broad subjective concept of reasonable belief that a crime has been committed as to a misdemeanor without a warrant.

ASSEMBLYMAN THELIN: Now you would agree, would you not, that in any law of arrest you're going to have to place a certain amount of discretion in the hands of the arresting officer?

DOUGLAS R. GREER: That is true sir.

ASSEMBLYMAN THELIN: No doubt about that.

DOUGLAS R. GREER: Yes.

ASSEMBLYMAN THELIN: I would just like to point out to you that there is two sides to this, obviously, but I mean sometimes, we in the Legislature, you know we get complaints from citizens who feel that the officers are not arresting enough. Somebody will write you a letter as I got one not long ago - somebody had been loitering outside the confines of his house and he was greatly upset because the Sheriff came and he wouldn't arrest these two men. He let them go and this man seemed greatly upset about this. He felt these people were planning to break into his premises, etc. and any lawyer I think has a lot of experiences, particularly in domestic relations cases, you know where there's violence and the officer comes and he won't make an arrest and goes away again and tells the woman who has been beaten, perhaps, to see here attorney. Her attorney generally, can't do much for her as a matter of fact, because a court order isn't going to stop some husband from beating up his wife, no matter what anybody might say. So there are instances where we would like the officer to make an arrest and

perhaps it's good preventive activity for society. I sometimes think that if they arrested some of these people and got rid of them a little earlier, maybe we wouldn't subsequently have a murderer once we know there is a violent personality loose in the community. I think we sometimes are very critical of the officer and don't realize that he has a very difficult role to play in society.

DOUGLAS R. GREER: I played that role myself so I know.

ASSEMBLYMAN THELIN: Well, you pointed that out to us. And in the matter of police brutality - this is what always happens, somebody comes in and says there has been some police brutality someplace and perhaps there has - I'm not saying this isn't true, then you say how many cases were there? How many convictions? And then the answer is the same one that you have given us here this morning. These cases can't be proven. And perhaps they can't, but then on the other side of the picture how do we know that the allegations are true that can't be proved. It's a very difficult thing and it's very easy to cast a stone, I think, at a police department and say there's been brutality, on the other hand it seems to me that they're hardly in a position to protect themselves because if a case isn't proven then the answer is the one you have given here, well, it can't be proven, we can't make out a case. Well, what's the answer to that from the police department?

DOUGLAS R. GREER: Well, when you have third party disinterested eye-witness citizens who witness a police officer on a public street club a man who is approximately 70 years old, this is good enough for me, now I don't know how much evidence respective people --

ASSEMBLYMAN THELIN: Well, you would say that that case can be proven.

DOUGLAS R. GREER: Yes.--

ASSEMBLYMAN THELIN: I mean there are some that can be proven --

DOUGLAS R. GREER: Yes --

ASSEMBLYMAN THELIN: I mean you couldn't say that all these cases can't be proven and come to the Legislature and say well, do something about unproven cases.

DOUGLAS R. GREER: I think if we just project our thinking perhaps to a mental ward in the County Hospital or any county hospital or state hospital, we might find some violence there in the more violent mental cases and we rarely hear of brutality to the extent emanating from mental wards or psychiatric wards as we do from police departments. The statistics would bear careful consideration why the claim is always from the police department. Incidentally we don't have them in the Sacramento County Sheriff's Department.

ASSEMBLYMAN THELIN: You have no cases of brutality?

DOUGLAS R. GREER: I only know of one alleged case in Sacramento County Police Department.



ASSEMBLYMAN THELIN: What is the situation in San Francisco? Do you have any knowledge of the situation there?

DOUGLAS R. GREER: Only hearsay. And one gentleman pointed out that I shouldn't use that.

ASSEMBLYMAN THELIN: Well, that's what we seem to hear most of the time -- hearsay. What kind of reputation does the community of San Francisco have in this field?

DOUGLAS R. GREER: Well, I went to school there, and I lived there about three and a half years. They had a reputation that varied. Some thought they were a police state and others had no quarrel with the police department. You had the two extremes. I haven't been there recently enough to have a well grounded opinion on it. I know I read Mr. Terry Francois' remarks and I read several other gentlemen's who testified before this committee down in San Francisco. I know what their thinking is. And I know what the Chief of Police's thinking is, through his representative. As to what the people think, I don't know.

ASSEMBLYMAN THELIN: Well, let me ask you this, Mr. Greer. As a matter of legal administration, does the Attorney General have any way to investigate and check on the instances of police brutality, say in a city department?

DOUGLAS R. GREER: I would imagine as the Chief Executive Law Enforcement Officer, he would have power to check into any law enforcement feature in the State of California.

ASSEMBLYMAN THELIN: Do you think this is an ultimate responsibility of the Attorney General's office?

DOUGLAS R. GREER: Yes, I do. In fact there was legislation introduced earlier this year in this session which didn't get too far in the legislative process. I don't recall who introduced it, I think it was Senator Flournoy on the coast. Grunsky, yes. I saw about three bills -- three or four bills he had proposed. They met a rather sudden demise, but it was requiring every police chief or county sheriff to, within 48 hours after a charge of police brutality had been lodged against them, make a thorough investigation and report it to the Attorney General, who in turn must make a thorough investigation within so many days. And all of these matters would be a matter of public record. In other words, it wouldn't be asking police or sheriff's departments to investigate themselves in closed session, and then conceal the outcome of the investigation.

ASSEMBLYMAN THELIN: You feel the Attorney General has the authority at the present time to actually investigate these cases, however, even without ...

DOUGLAS R. GREER: Oh, I would enable -- no, I would enable

him with very specific statutes, and tie it down to time and -- 48 hours, 4 days, something like this so that the process keeps rolling. I'd keep the burden on the police and sheriffs departments to make their reports to the Attorney General. Not immediately, not within reasonable time, but not more than 48 hours or something like that.

PAMELA THOMPSON: Mr. Greer, it has been my impression from the things that I've read about the Los Angeles City Police Department that their training far exceeds that of the average police department throughout the state. Is it your impression that that has no effect upon the amount of police brutality?

DOUGLAS R. GREER: I don't think that I contended that. But ...

PAMELA THOMPSON: I was just wondering if it is widespread there, then it would be the assumption that ...

DOUGLAS R. GREER: Yes, in fact two Negro attorneys were very viciously beaten; they were brothers. The Boggs brothers - here about 8 or 10 weeks ago. Before they were even identified they were whipped. However, Los Angeles County does have a Human Relations Committee and Mr. Buggs is the Director of that. I talked with him about two weeks ago and they have done some very effective work with the police department as an outside agency coming in and training them or talking with the police officers, particularly the new recruits in trying to develop inter-group harmony and how to handle inter-group problems. And he feels that there is some measurable progress being made, and he's very optimistic about it. But he does feel, too, that if you have a backlog of older police officers who haven't had the advantage of this in the initial training and perhaps they would be a little more difficult to reach with this new approach than some of the new men ...

PAMELA THOMPSON: But the amount of training involved does seem to have an appreciable effect, however?

DOUGLAS R. GREER: Insofar as these things can be measured, he's optimistic about it.

PAMELA THOMPSON: Have you any specific proposal for state legislation to correct the situation?

DOUGLAS R. GREER: Yes, I like very much the method which Senator Grunsky proposed. Perhaps, it could be enlarged a little bit, made a little more detailed. I don't have those numbers, but ... and I think a little more vigor could be put behind it, too.

PAMELA THOMPSON: Could you tell me whether you happen to know anything about the telephone call bill and the situation locally? Are prisoners in the Sacramento City and County jails allowed their two telephone calls within three hours of arrest?

DOUGLAS R. GREER: Since that law was expanded a little bit, I have heard no criticism from my clients, none whatsoever, that they have been denied. As far as I can determine they have been accorded the

right to make bail contact and also to call an attorney. In some instances, I think, our local police department has gone beyond the minimum that they had to. I know that to be a fact.

PAMELA THOMPSON: I've heard one allegation that some persons are arrested on one charge, make bail, say on \$2,000 bail, and then will very shortly thereafter be re-arrested on a similar new complaint, so that the effect is that they are denied bail. Do you have any knowledge of that situation?

DOUGLAS R. GREER: Only I've heard that -- I've heard it discussed. I have not encountered that in my practice.

PAMELA THOMPSON: A recent story in the NEW YORK TIMES related to the difficulty of the members of the minority groups and of Negroes in the South getting legal counsel in cases that they might wish to bring. And in those cases the NAACP sometimes sends out a state counsel. One reason cited for the fact that they could not get local counsel was the fear of the local people that they would lose their livelihood and their private practice. Is there a related, similar situation involved in California with the tort liability cases?

DOUGLAS R. GREER: I can only speak for myself. I wouldn't have any hesitation trying a tort case anywhere in my own city. In fact, I've done it against the police. Perhaps, I've brought more charges against the police department than any man in the history of Sacramento. And it hasn't hurt me. I don't believe it has; I can't measure it.

PAMELA THOMPSON: I have just one more question. The recent Civil Rights Commission report makes several recommendations. One of them is a law making the government agency employing an officer jointly liable with the officer to suits by the victims of the officer's misconduct. Would you endorse that as an effective sanction?

DOUGLAS R. GREER: Yes. Did you say the agency employing him as well as the officer? Yes, it would. And I would go further - I would say both the agency and the officer should be covered by minimum liability insurance, not less than \$10,000. I think that should be an expense borne by the employing agency.

ASSEMBLYMAN KILPATRICK: I would just like to ask if you have any information or complaints against the sheriff's office of Los Angeles?

DOUGLAS R. GREER: None whatsoever, sir. Never have.

ASSEMBLYMAN WOLFRUM: Mr. Greer, you've been discussing -- that is the assault of police against citizens. I wonder if you have a solution for what police administrators describe as a very serious problem in the increase in assaults against peace officers? Do you have any solutions for that problem?

DOUGLAS R. GREER: As I pointed out this morning, the radio said a young deputy sheriff of this county died from a bullet wound



from a person that was being arrested the night before last, I believe it was, right here in Sacramento County. It's a delicate balance, Mr. Wolfrum. I'm not speaking of the situation where a police officer stops a person and this person whips out a gun and shoots him or threatens to shoot him. I'm not speaking of that type of case, when we say police brutality. I'm speaking of a case where a man might be in a city jail and because he speaks in a way that doesn't please someone or because he's offensive to the eye of some police officer, then he is set upon. I'm not speaking of a case where an officer has to make a split second decision as to his safety or the arrested person's safety. I'm speaking of where the man is in, sometimes, in handcuffs and there are two or three police officers around. And when there is only the most sympathetic person that could say the officer was in jeopardy. And it's in these situations, Mr. Wolfrum. We're not talking about the instantaneous decision situations. I'd say give the benefit to the police officer every time, if there's a momentary choice between his life and the offenders life. I'd give the benefit to the police officer every time. I think society must do that. I was speaking of the situation where the man's in the elevator, handcuffed, the man's in the squad car, or the man's in the interview room and he gets smart. But, there are three or four officers around him. Those are the situations I'm referring to.

ASSEMBLYMAN WOLFRUM: Now then, were you speaking of some person charged with a crime and maybe attempting to rationalize his injury and would indicate that his injury occurred after the arrest was effected, rather than at the time of resistance to the lawful arrest or unlawful arrest, as the case might be?

DOUGLAS R. GREER: Well, if you want me to assume that situation, I will. I can assume another situation where he is injured and ...

ASSEMBLYMAN WOLFRUM: In other words, there are several answers to this problem. You're speaking as a defense-minded attorney that has listened to many of these stories in the course of your career as an attorney.

DOUGLAS R. GREER: That's true. We try to get the facts.

ASSEMBLYMAN WOLFRUM: Similarly, I think that you've made the suggestion that the police may be responsible for excessive bail. It's my understanding that all bail schedules are set by the court. So, really this is not a function of the police to set bail on a man.

DOUGLAS R. GREER: I think that the record will show that you are misquoting me, Mr. Wolfrum. I didn't say the police set bail. These bails are actually set, as you say, by those other than police. But they are charged with more crimes which call for more bail, sir.

ASSEMBLYMAN WOLFRUM: Well, it's ... don't you conceive of situations where there could be three or four crimes under investigation or at least justifying the arrest. Are you suggesting that he should be bailed out on the minimum charge?

DOUGLAS R. GREER: I suggest, sir, that he should --

ASSEMBLYMAN WOLFRUM: Or at the arraignment, that the judge has the choice of what he wants to do with him in terms of bail?

DOUGLAS R. GREER: No, Mr. Wolfrum, I suggest that he be charged with those crimes that the officer actually believes he has committed and has some reasonable evidence to support. Not three or four crimes, and then when he gets to court, they say, "Well, if you cop him out to a vag, we'll dismiss the other three." This is very consistent.

ASSEMBLYMAN WOLFRUM: I don't think this is done in L.A. County any more, is it?

DOUGLAS R. GREER: I'm not from L.A. sir; I don't know.

CHAIRMAN O'CONNELL:- Nobody can cop to vag any more.

DOUGLAS R. GREER: No, I'm using the old historical situation. That's true. Although, there are some vags left -- vagrancy situations in the Penal Code.

ASSEMBLYMAN WOLFRUM: I'm also interested, Mr. Greer, in what observations you might care to make relative to the increase of crime in California. I think the 1960 report of the Attorney General indicated about a 19% increase in major crimes in California. Do you see any correlation between these various problems that we're talking about and the increase in the major crime rate in California?

DOUGLAS R. GREER: I think the police problems are increased proportionately. Yes, they are. When you say these problems we've been talking about, the matter of abusing a person in custody after he's in a city jail, that has nothing to do with what we're talking about. The increase in crime, that is. A person who is arrested and in custody should be treated properly. No question about it. It doesn't matter whether the crime statistics are 100% higher or 200% lower, once he gets into custody he should be treated as a human being.

ASSEMBLYMAN WOLFRUM: I don't think we're in disagreement over this.

DOUGLAS R. GREER: Yes, that's right. I'm trying to distinguish that the broad statement you made, sir, that -- the things we've been talking about. Surely, the police officer has greater problems. Organized crime, if I read correctly, is encroaching on the western part of the country, petty crime is rising, although it's unorganized. Of course the officer has his problems, but I think the officer has had problems ever since there have been police officers. The increase in problems shouldn't, in my opinion, just completely put every citizen at the mercy of some rather flexible discretion of a police officer. And I say this and I've never been arrested under the circumstances that we've been talking about. Came near it one night, but I didn't quite make it.



ASSEMBLYMAN FRANCIS: That's ... Mr. Greer, in the cases of alleged police brutality, what do you consider would be sufficient provocation by one who is arrested, so that the peace officer, perhaps, is justified in attacking or defending himself. Of course, we've used the extreme case of a gun or pistol being used by the arrested person, but what about the cases where the police officer is struck or shoved or pushed?

DOUGLAS R. GREER: I still feel that ... let me go back and repeat myself. If an officer has any real doubt in his mind that he's going to be seriously injured, I would give all, put all presumptions in favor of the officer. Particularly, where there is a dangerous weapon situation involved. This is essential. I would make no reservations. I don't think the average officer wants to shoot a person on the spot unless he really believes it is necessary. He may be mistaken later, but if he honestly believes it, that's all right. But there are situations where, let's use the expression the newspapers use, "young punks become obstreperous" and they give a lot of lip to a police officer or a group of police officers. And they are not respectful as they should be respectful. But they're not. This seems to bring on a certain pattern of behavior then where maybe a little more diplomatic handling would not have resulted in brutality. But, then we have to show who's boss and display of force is used sometimes considerably out of proportion to the circumstances.

ASSEMBLYMAN FRANCIS: Well, I don't think there is any question if the officer fears there is imminent danger or he is going to be seriously injured or perhaps even killed. But, this is the extreme case, but suppose a police officer does arrest a person and this arrested person uses some resistance, I mean just by shoving or pushing him or even hitting like that. Don't you think the police officer has a right to use any force that is necessary, without being charged with police brutality?

DOUGLAS R. GREER: I say ... let's take your word necessary. He has handcuffs - if he is man enough he should handcuff him.

ASSEMBLYMAN FRANCIS: Yes, but there may be a struggle ensuing in order to handcuff the prisoner or put him under control.

DOUGLAS R. GREER: That's true.

ASSEMBLYMAN FRANCIS: Now, do you think that this will call for a charge of police brutality?

DOUGLAS R. GREER: No, I do not sir. I think it's a proper charge of resisting arrest, if the arrest was lawful from the inception.

ASSEMBLYMAN FRANCIS: Now, let's take another case, let's say that the arrested person is very rude, uses vulgar and obscene language to the peace officer, and perhaps, even swings at him or misses. Do you think that is sufficient provocation for force being used by the police officer?

DOUGLAS R. GREER: That force which is reasonably necessary? Is that what you mean, sir?

ASSEMBLYMAN FRANCIS: Yes.

DOUGLAS R. GREER: Yes, I think it is.

ASSEMBLYMAN KNOX: Well, we're talking about the force of restraint rather than the force of retaliation --

DOUGLAS R. GREER: That's right.

ASSEMBLYMAN KNOX: Which is two entirely different things.

DOUGLAS R. GREER: That's correct, sir. I think if the police officer can handcuff him, put his hands behind him, he should do so. If he's having difficulty with this and I know some of the officers I've seen couldn't handcuff some of the men I've seen if the men I've seen didn't want to be handcuffed, then, of course I think it calls for perhaps other measures. And those measures should be tempered with how aggressive the arrested person is.

ASSEMBLYMAN FRANCIS: Well, you mentioned young punks, and I assume that you mean in those cases they're using sarcastic language or --

DOUGLAS R. GREER: Yes.

ASSEMBLYMAN FRANCIS: Something of that nature, but do you believe that this should be carried to an extreme where an arrested person has the right to use any type of rude, offensive, or abusive language to a police officer?

DOUGLAS R. GREER: Definitely not, sir.

CHAIRMAN O'CONNELL: Mr. Kilpatrick.

ASSEMBLYMAN KILPATRICK: I'd like to ask what you think that the officer has got a right to expect from a person, say, at 3 A.M. in the morning, who is - a person is loitering on the street and the officer asks him who he is and what his business is, where he expects to go, what - asks him for any identification of himself. What do you think of that?

DOUGLAS R. GREER: Personally, Mr. Kilpatrick, if an officer stopped me, I would --

ASSEMBLYMAN KILPATRICK: What's that?

DOUGLAS R. GREER: If an officer stopped me, I would give him all the identification I had on me, because it doesn't offend me at 3 o'clock in the morning to be checked out.

ASSEMBLYMAN KILPATRICK: And in the event that you refuse, then what?

DOUGLAS R. GREER: In the event that another person would?

ASSEMBLYMAN KILPATRICK: He refuse to identify himself.

DOUGLAS R. GREER: Under the existing law, he can be arrested.

ASSEMBLYMAN KILPATRICK: And you're satisfied with that?

DOUGLAS R. GREER: I say this, it is subject to abuse, Mr. Kilpatrick, it is the subject of abuse. Of course, what law isn't, really.

ASSEMBLYMAN KILPATRICK: But you think that there is a legitimate ground for him giving ...

DOUGLAS R. GREER: I do, yes.

ASSEMBLYMAN KILPATRICK: Thank you.

CHAIRMAN O'CONNELL: Thank you very much, Mr. Greer. We've kept you for quite a while.

DOUGLAS R. GREER: Thank you, gentlemen. That's all right.

CHAIRMAN O'CONNELL: Before calling the next witness, I'd like to introduce a late arrival, Assemblyman Nick Petris from Oakland. He is on my right.

Mr. Bartley Cavanaugh? Just sit down and identify yourself for the record.

Bartley W. Cavanaugh  
City Manager  
Sacramento, California

BARTLEY W. CAVANAUGH: And I've been in that position since June 1, 1946.

CHAIRMAN O'CONNELL: Will you - I know that you were here for a while, while we were asking questions of Mr. Greer. I think you know in general, at least, the subject matter that we're looking into today.

BARTLEY W. CAVANAUGH: I heard part of his testimony.

CHAIRMAN O'CONNELL: Did you have any statement that you wanted to make? Or did you just come to place yourself open to questions?

BARTLEY W. CAVANAUGH: I came at the request of the committee. I am not a police expert, as such. I do feel that I am the City Manager and under the articles of our charter, I'm charged with proper operation



of the Sacramento government, including the police, fire and all departments.

CHAIRMAN O'CONNELL: Do you have a general supervisory function with respect to the police department?

BARTLEY W. CAVANAUGH: I have a direct responsibility. It's my responsibility to appoint the Chief of Police and his assistants. All his chief assistants ... And they serve at the pleasure of the City Manager. Under the charter, I am charged with the, in the case of the police department, seeing that all laws and ordinances are enforced through the chain of command of the police department.

CHAIRMAN O'CONNELL: Do you have any opinion with respect to the question that was raised earlier and put to Mr. Greer about the recommendation of the United States Civil Rights Commission that there should be enacted a law making the government agency employing a police officer, jointly liable with the officer to suits by victims of the officer's misconduct?

BARTLEY W. CAVANAUGH: Well, I hadn't given it much thought. Under the present situation the city does carry insurance protecting the city from false arrests, or illegal acts. We have had police officers charged - pardon me, sir.

CHAIRMAN O'CONNELL: Is that insurance on the city's liability only, or is it also on the officer's liability?

BARTLEY W. CAVANAUGH: It is on both. If it isn't proved that the officer had been - committed something wilful and illegal - we've had this point come up in a couple of cases. To determine whether the insurance company would defend the police officer, you would first have to make a judgment of whether he was guilty of committing an illegal act, wilfully. If he were to make an arrest on a warrant and was it found to be an illegal arrest, then, of course, he would not - the insurance would depend. In our particular city, the insurance companies have defended the officers in all cases, to my best recollection.

ASSEMBLYMAN KNOX: Well, this has to do with the fact that you can't insure against an intentional tort. And if it's a negligent tort, the insurance would apply. But, if it's shown that the officer committed an intentional tort, the insurance generally covers \*\*\*

BARTLEY W. CAVANAUGH: That is correct, and we have encouraged, it's on a voluntary basis. But, I do believe that the Peace Officers Association, or one of their association, does provide insurance, so that if an officer were convicted of doing something and the damage were substantial, the person winning would be compensated. I think all our police officers carry that type of insurance. That would be in addition to what the city carries.

CHAIRMAN O'CONNELL: Well, is there double insurance then?

BARTLEY W. CAVANAUGH: No, I wouldn't say so. I would say if the act were in line of duty, reasonably so, the city would be responsible. But if the police officer did something that was clearly illegal, and wilfully so, he would be - our insurance and we would not be held responsible.

CHAIRMAN O'CONNELL: Would the policy that the officer has cover him in that situation?

BARTLEY W. CAVANAUGH: That's my understanding.

CHAIRMAN O'CONNELL: I find it a little hard to understand how the city couldn't provide insurance for, say, a wilful tort, but the Peace Officers Association could provide such insurance.

BARTLEY W. CAVANAUGH: Well, we've gone into it limitedly and found that insurance companies would not do it. Whether it's legal or not, I don't know. We were unable to get insurance covering -- a man, for instance, might go crazy or something. I just am not an expert in that field, but that's been our experience.

ASSEMBLYMAN KNOX: Well, I think it's the liability of the cities based on the negligent employment of the policeman. And acting in the course and scope of his employment. So, that's insurable --

BARTLEY W. CAVANAUGH: That's right.

ASSEMBLYMAN KNOX: Well, the liability of the police officer, for false imprisonment, would be an intentional tort. I don't think any insurance would cover it. They may have a defense fund that they've gathered up, or something, and use it in that sense. But, it's not strictly an \*\*\* contract.

BARTLEY W. CAVANAUGH: Well, I think that's what ...

CHAIRMAN O'CONNELL: You have one type of situation where let's say the complaint was that the officer struck the complaining person unnecessarily without any cause. And then, you might have another situation where the officer makes an arrest, in one of these borderline cases, where perhaps the officer doesn't really know whether the arrest is lawful in the first place and perhaps sometime later some appellate court tells him it wasn't lawful; in which case an action for false imprisonment or false arrest might lie on the part of the arrested person. And this would be in that area where you couldn't really call the tort an intentional one. And it would be insurable.

BARTLEY W. CAVANAUGH: I would say the city would be held responsible.

CHAIRMAN O'CONNELL: In that situation ...

BARTLEY W. CAVANAUGH: That's correct.

CHAIRMAN O'CONNELL: Do you have a residence requirement here for the employment of police officers?

BARTLEY W. CAVANAUGH: Yes. The charter provides that a man must be a resident of the city for three years prior to his employment. It was a vote of the people within the last ten years. We've had an amendment to the charter providing that in any area which has been annexed to the city, residents of that area would count just the same as living in the city. For example, if a man lived in an area for three years and was annexed, he would be eligible for employment. Now, they can take the examination, the civil service acts, prior to that time, but our charter provides that, except in specialists - doctors, people of that type, there is a residence requirement.

CHAIRMAN O'CONNELL: Do you think that a reasonable sort of requirement? Has it been any handicap to you?

BARTLEY W. CAVANAUGH: In the recruiting of personnel, no. We've been discussing it. We have not had a shortage of personnel. There has been some thought of reducing, but particularly in the police field, we feel the local knowledge of the man by his neighbors and so forth is helpful in the examination for entrance into the department. We have a check made after a man passes the written and physical part of the examination, as to his reputation, of general status with his neighbors and so forth.

ASSEMBLYMAN WOLFRUM: Could I ask a question, Mr. Chairman?

CHAIRMAN O'CONNELL: All right.

ASSEMBLYMAN WOLFRUM: Do you have a recruiting problem at the present time?

BARTLEY W. CAVANAUGH: We do not, no. We feel that our salary situation, our working conditions, our benefits are enough to attract, and they do. We're very proud of the conditions under which the city employees work. We have better conditions than some of the people working for the state. I'm talking of people in the same field.

I was very interested in the Legislature passing a medical plan for their employees. We've had it for some three years. It's a little more elaborate plan than the state is suggesting. And the city pays the entire cost for all employees. They, in turn, can have the same plan. It's a \$10,000 complete coverage, \$50 deductible plan. They can have that for their family. In bidding for the insurance, when we originally started, it was expressed by the city, a desire that the cost to the employee for his dependents be kept at a minimum. On the other hand, the profit interest must be weighed as much as possible on that side that the city pays. So, it's been a great help to our people.

We have a very fine pension plan. Speaking about policemen,



if a policeman is hurt in line of duty, or any employee of the City of Sacramento, they receive their full pay the instant they're hurt. They're not on workmen's compensation. We do carry workmen's compensation to protect the city from a catastrophe or a large number of people being hurt at one time. But, our people are fully compensated. Our salaries are not quite as high as, say, Los Angeles. Just for information, as of January 1st, the regular patrolman in Sacramento will be paid \$600 a month. We figure our fringe benefits at about 26% of salary. So, we feel that they have a real good job, they have civil service protection, and we have no trouble with recruitment. We go in rather strongly for training and wherever possible, we send our supervising personnel, our younger supervising personnel in the police department, to the FBI Academy in Washington. We have twelve officers who are now trained by the FBI to do some training in our training academy. We give training to our young law officers. We have instructors from the FBI, from the Attorney General's office, from local judges. I think they're doing good training. We think that's very important.

CHAIRMAN O'CONNELL: You also participated in the California program that was --

BARTLEY W. CAVANAUGH: Yes, we do.

CHAIRMAN O'CONNELL: -- enacted here a couple of years ago?

BARTLEY W. CAVANAUGH: I think our chief was one of the - is a member of the board.

CHAIRMAN O'CONNELL: Yes. Do you know how many officers in your department have participated in the training program that the state has?

BARTLEY W. CAVANAUGH: No, I couldn't tell you. We have in-service training every year for all officers, even though they have been there for many years. They have refresher courses for them.

CHAIRMAN O'CONNELL: How do you handle complaints against the police department? I read in the paper a little bit about some problem you had with your city council and ...

BARTLEY W. CAVANAUGH: Yes, we have had people come before the city council and make complaints. We have attorneys come and say that their clients have been abused. We are very fearful, of course, of making an examination ourselves, so that people would say that it was a whitewash. We do check all the records, get the reports, and if it appears that there is reasonable doubt that the policeman has done right, we ask the District Attorney's office or the grand jury to investigate. We hesitate to make a judgement in the matter when a case is pending in court. For instance, if a man is arrested for resisting arrest, we do not like to take any action while the case is being - is pending.

CHAIRMAN O'CONNELL: Do you have a Police Commissioner?

BARTLEY W. CAVANAUGH: No, we do not.

CHAIRMAN O'CONNELL: Who ultimately, then, has the disciplinary power? The Chief of Police or ...

BARTLEY W. CAVANAUGH: The Chief has. The Chief can suspend any officer for thirty days with permission of the City Manager. The City Manager can dismiss any police officer with unanimous consent of the council. The supervising personnel can be demoted by the City Manager. And they have been - not for police brutality.

CHAIRMAN O'CONNELL: Was there some recent action by the city council of creating a committee of the council to investigate these complaints?

BARTLEY W. CAVANAUGH: The City Council of Sacramento does have standing committees. There are nine members, and they do have standing committees. My best recollection is that our recommendation on the last case we had, I think it was Mr. Greer's case, that we requested the District Attorney to present the facts to the grand jury. As far as the committee of the council, we have a police committee that does - police matters usually clear through that committee. But, the responsibility under the charter is that the manager is charged with proper operation of the city and given definite authority and definite responsibility.

CHAIRMAN O'CONNELL: Mr. Kilpatrick.

ASSEMBLYMAN KILPATRICK: Mr. Cavanaugh, is your training program mandatory under the -- affecting all police officers?

BARTLEY W. CAVANAUGH: Yes, and it has been for --

ASSEMBLYMAN KILPATRICK: And how extensive is it? Can you tell us anything about it?

BARTLEY W. CAVANAUGH: I can't give you the details. I think it's a 30 day program. Some work in the Hall of Justice - routine matters - but, not doing police work. So, we have an academy and we have people who teach them, I think six hours a day.

ASSEMBLYMAN KILPATRICK: For a 30 day period.

BARTLEY W. CAVANAUGH: Yes. And then we have a refresher course. We have - we've had a great deal of help from other agencies such as the FBI, the Attorney General's office. I think during the course, someone either from the Attorney General's office or a local judge will instruct the recruits on the laws of arrest and so forth. Giving evidence ... I think we have a fine training program. A good many of our own officers who have been trained by the FBI for that purpose also do instructing. I think the Sheriff's Office of Sacramento County is joint with us. It's our school, but they send their people to it.

CHAIRMAN O'CONNELL: Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Mr. Cavanaugh, who hires you?

BARTLEY W. CAVANAUGH: The city council. Under our charter it says that any time there is a vacancy, five members of the board of the city council shall select a City Manager. And after the first year - during the first year he cannot be fired except when he gets his hand caught in the till or for some particular offense. After the first year, at any time the majority of the council thinks the manager is not doing a good job, it can dismiss him on a minute's notice without filing charges or anything.

ASSEMBLYMAN WOLFRUM: In other words, if the council were to be dissatisfied with your operations of the police department, they could tie a can to you and you'd be on your way.

BARTLEY W. CAVANAUGH: I'm sure that they would.

ASSEMBLYMAN WOLFRUM: And similarly, the people elect the councilmen. Is this correct?

BARTLEY W. CAVANAUGH: That is correct.

ASSEMBLYMAN WOLFRUM: And if they're dissatisfied with the operations of the police department within your city, they have the right to change councilmen.

BARTLEY W. CAVANAUGH: Yes, we've just gone through an election. And I've been there 16 years. Been through, I think, nine elections. I've served under 34 different councilmen during those nine elections, of course, there were nine - they all run at one time every two years. There are nine positions open every two years and if there are nine elections would be 81 seats open. I think the record shows that only four incumbents have been defeated for office, that were not re-elected.

ASSEMBLYMAN WOLFRUM: In other words, the people of this community apparently are satisfied with your operations, the operation of the council, or they would have changed horses.

BARTLEY W. CAVANAUGH: Well, they have been up to this time yes.

ASSEMBLYMAN WOLFRUM: Thank you.

CHAIRMAN O'CONNELL: Mr. Burton, did you have a question?

ASSEMBLYMAN BURTON: Yes.

CHAIRMAN O'CONNELL: Better grab that mike. Incidentally, another late arrival is Assemblyman Phil Burton from San Francisco, who will now propound the question to the witness.



ASSEMBLYMAN BURTON: I've been on my own time for the last four legislative hearings, so I'm on my own time, Mr. Cavanaugh.

BARTLEY W. CAVANAUGH: Yes, sir.

ASSEMBLYMAN BURTON: That's the worst of all times to be on. Do you have any period of instruction in inter-group relations, in whatever special knowledge might be useful in dealing with either the Spanish speaking community or the Negro community or so forth? Do you have any course of instruction on that?

BARTLEY W. CAVANAUGH: No, I don't think in that point we do. We do have officers who speak Spanish. We do have officers from minority groups. We have felt that this is necessary in our recruitment program. Just so happened that prior to my being City Manager, we had never had minority groups in the police department or fire department. We do have them now and they are very efficient. We hope that we continue to have minority groups take our examinations.

ASSEMBLYMAN BURTON: Have there been any requests to your knowledge by, let's say, the local branch of the NAACP, that there be some instruction in inter-group relations?

BARTLEY W. CAVANAUGH: Not to my knowledge. We in the past - we have asked some of that group to try and interest some of their younger people in taking these examinations. For quite a while, there were few applicants who, for instance, took the fire department examinations. I'm talking about the NAACP. We requested that they --

ASSEMBLYMAN BURTON: The employment pattern is interesting, but in addition to that, in most of the larger cities this is a matter - it would occur to me would be some value to recruits and to trainees to have some exposure to the - and insight - into the communities. I just wanted to know if you had that instruction made available.

BARTLEY W. CAVANAUGH: I would hesitate to say no, because I'm not that familiar with - the training program has increased considerably under help from the state and if that's a standard that is used, I'm sure they have it. I don't know.

ASSEMBLYMAN BURTON: It occurs to me that if you're arresting some Negro suspected of crime and the officer addresses him as "boy", from that point on you're liable to really be at bat and if these officers don't --

BARTLEY W. CAVANAUGH: I agree with you.

ASSEMBLYMAN BURTON: -- know this, perhaps they are inadvertently, perhaps, creating a problem for themselves along the way.

BARTLEY W. CAVANAUGH: That is correct. I might - I was asked about how investigations - we had a gentleman appear before the city council and contend that he was arrested illegally or improperly and because of his race. He was arrested for being intoxicated. I

made an investigation and after ten minutes, I determined that I thought his case was unfounded. The officer who made the arrest was of the same race as he was, a colored man. And the doctor who pronounced him intoxicated was also of his race. So, I did not feel that he was discriminated against, because of his race. I would think not.

CHAIRMAN O'CONNELL: Mr. Knox.

ASSEMBLYMAN KNOX: Have there been any instances in the, say, last five years, of policemen being disciplined for being brutal towards or improperly treating people in custody?

BARTLEY W. CAVANAUGH: Yes.

ASSEMBLYMAN KNOX: There have been? Can you give us any idea of approximately how many?

BARTLEY W. CAVANAUGH: We had one police officer who proved unsatisfactory and we let him go. He happened to be of a minority race and that wasn't the problem. He was a good policeman --

ASSEMBLYMAN KNOX: The problem was of mistreating --

BARTLEY W. CAVANAUGH: -- except he was too rough.

CHAIRMAN O'CONNELL: Do you have any opinion about the proposal that has been made in some communities and I understand was adopted in the City of Philadelphia? The establishment of police review boards - independent agencies to judge the points concerning the police department.

BARTLEY W. CAVANAUGH: We would have no objections to it. We have felt that the grand jury was a pretty good cross section of non-connected people. We have always felt that whatever decision we made that could be attacked on the ground that we were prejudiced, if it's an involved case, we have always asked that the District Attorney absolve us or the grand jury investigate it. We have confidence in the grand jury in the situation.

CHAIRMAN O'CONNELL: Is the grand jury - the grand jury would have the power, as I understand it, to return an indictment against the offending officer. Would have \*\*\* any power to suspend or if anybody --

BARTLEY W. CAVANAUGH: Oh, no.

CHAIRMAN O'CONNELL: Just when --

BARTLEY W. CAVANAUGH: No, but I - we have found that in the grand jury reports they make recommendations to public agencies on the manner of operation of the jail or the police department, so forth. I'm sure that ...

CHAIRMAN O'CONNELL: Such recommendations usually do not concern themselves with individuals, though, do they?

BARTLEY W. CAVANAUGH: If we felt that it was reasonable to believe that a police officer had used more force than necessary, we would not hesitate to suspend or to ask permission that he be dismissed. And I'm satisfied with the experience with the different councils. They would grant it.

CHAIRMAN O'CONNELL: That would be a decision that you or the Chief might make as distinguished from a grand jury or any other independent agency.

BARTLEY W. CAVANAUGH: That is correct.

CHAIRMAN O'CONNELL: As I understand it, the police review board, Philadelphia style at least, would give such power directly to the reviewing agency.

BARTLEY W. CAVANAUGH: That last city election - one of the candidates who was not elected did suggest that we have a police review board, but a board that - interracial board - that problems could be appealed to. And it's my understanding that the new council comes in January and that's one of the things that they are considering. That would be a matter set up by the council. We have three new members coming on the 1st of January.

CHAIRMAN O'CONNELL: Mrs. Thompson.

PAMELA THOMPSON: Mr. Cavanaugh, in January of 1960, the Sacramento County Grand Jury said that they were satisfied that there was a lack of satisfactory administrative procedures to handle brutality charges alleged against policemen. Has there been any new procedure instituted as a result of that finding?

BARTLEY W. CAVANAUGH: I wouldn't say there were new procedures. I'd say there was a tightening of them - reports, etc.

PAMELA THOMPSON: They also suggested that the Citizens Committee which would be a forerunner to a police commission, perhaps, would be empowered to employ professional advice on police organization and administration. There was no Citizens Committee, of course. As I understand it, the Public Health and Safety Subcommittee of the city council was made responsible for that.

BARTLEY W. CAVANAUGH: That is correct.

PAMELA THOMPSON: Have they, since that time, employed any professional advice on police organization and administration?

BARTLEY W. CAVANAUGH: They have not. We have on our own initiative had a firm make a survey to tell us what it would cost to make a thorough survey of procedures and so forth in the police department, and we are recommending such a plan to the council after



the first of the year.

PAMELA THOMPSON: There was some proposal adopted after that time requiring evidence when complaints were made before the city council. Is that correct?

BARTLEY W. CAVANAUGH: I don't recall. The council felt that people coming before the council and just making statements of what someone had told them was not the proper procedure, and that they requested that anyone making such charges would be either put under oath or certain procedures would be followed.

PAMELA THOMPSON: Well, from the newspaper clippings the oath suggestion, which I believe they attributed to you, was not adopted by the city council. But, they did require that evidence be submitted. Could you give us an idea of what kind of evidence and what degree?

BARTLEY W. CAVANAUGH: No, I think they are talking in point to people saying someone told them that Mr. So-and-so had been pushed around, beaten up or something. That they would not consider second hand complaints.

PAMELA THOMPSON: It would have to be by the person.

BARTLEY W. CAVANAUGH: By the person.

PAMELA THOMPSON: Has this subcommittee of the city council received any such complaints since that time?

BARTLEY W. CAVANAUGH: Not to my knowledge.

PAMELA THOMPSON: I read in the Bee, I believe recently, about the City Attorney investigating such a complaint. Would that be one? And as I recall, it was referred to him by the city council. Would that mean that the procedure now is for the City Attorney --

BARTLEY W. CAVANAUGH: No.

PAMELA THOMPSON: -- to investigate?

BARTLEY W. CAVANAUGH: I don't recall it - what you have reference to.

PAMELA THOMPSON: I'll get a copy of that article and send it to you this week. We had a letter from Mr. Nolder of the County Supervisors Association - as being opposed to insurance for officers, the premiums of which would be paid by the employing agency, on the ground that there was a continuing disparity in fringe benefits to peace officers over miscellaneous members in county employment. Has there been a similar feeling locally on that?

BARTLEY W. CAVANAUGH: You're talking merely about insurance or about the difference in fringe benefits to peace officers?

PAMELA THOMPSON: Insurance was, apparently in this case, considered as one of the fringe benefits which gave the peace officers an undue amount of fringe benefits when compared with other county employees.

BARTLEY W. CAVANAUGH: Well, I think historically in all cities, peace officers and firemen have been treated in a different light than miscellaneous employees. Our pension system is considerably different. I wish I were under the police department's pension system. But, I think that's historic. We have not proposed any change in it. As the premium on protecting a police officer from false arrest, that's an involved subject, and I think some of the gentlemen here know more about it than I do. I don't think we could insure a man from doing something wilfully wrong, to my understanding.

PAMELA THOMPSON: But he is insured at the present time for doing something that is not wilfully --

BARTLEY W. CAVANAUGH: That is correct.

PAMELA THOMPSON: Recently, in San Francisco the Police Commission made some changes giving the Police Chief more power. He has power now to demote an inspector to a patrolman although he hasn't the power, apparently, without other people's approval to dismiss him outright. Does the Chief of Police in Sacramento have the power to demote an inspector, say, or chief of one of his subdepartments?

BARTLEY W. CAVANAUGH: We have a little different system than some cities. The position of patrolman is a competitive civil service examination. After he serves his probation, the only way he could be dismissed would be by request of the City Manager and unanimous consent or a trial before us. It used to be that - and a police officer would be triable before the city council on a majority vote. The rank of sergeant in our police department is the same way. Ranks of captain, heads of the divisions, assistant chief and the chief ... The language of the charter is that they work at the pleasure - their tenure of office is at the pleasure of the City Manager. So, if a captain, in the opinion of the City Manager, on the recommendation of the Chief or without it, was not doing his job, he could be demoted to whatever civil service position he held. And that has happened.

PAMELA THOMPSON: But, the Police Chief himself has no such power.

BARTLEY W. CAVANAUGH: He has the power to suspend up to 30 days, and he has the power to recommend to the Manager.

PAMELA THOMPSON: If you should agree with the Police Chief to demote an inspector, say, to a position of patrolman or whatever the proper title is, would this person then have an appeal to the City Civil Service Commission or some such organization?

BARTLEY W. CAVANAUGH: No, he would not. In the slang expression, they get out the way they get in. They're appointed by the Manager and they're unappointed by the Manager. We do not have civil service for those ranks. We do limit promotion to the highest rank in the civil service, that of sergeant.

PAMELA THOMPSON: So, then you have the final disciplinary power?

BARTLEY W. CAVANAUGH: You do, and I think you have the responsibility with it.

PAMELA THOMPSON: Mr. Cavanaugh, do you know whether the new property receipt procedures that were instituted in Sacramento City Jails, sometime ago, are being followed as per instructions?

BARTLEY W. CAVANAUGH: I'm sure they are, yes.

PAMELA THOMPSON: They were not a few weeks ago at the time our inspector was there. That has been corrected, then?

BARTLEY W. CAVANAUGH: That's to my best knowledge.

PAMELA THOMPSON: Did you say the minimum training period for rookies in Sacramento is 30 days?

BARTLEY W. CAVANAUGH: I think that's it.

PAMELA THOMPSON: Is that classroom training or is that --

BARTLEY W. CAVANAUGH: I would say that 75% of it was classroom training. If - I don't know whether you have the Chief or someone from the department to appear. He could give you that in detail. We have a building that's devoted entirely to police training. We've just built the indoor range for firing and we certainly expect them to use it and I think they are.

PAMELA THOMPSON: Unfortunately, Chief Hicks is unable to be here because he is on vacation this week. We invited him once before, but unfortunately he was on vacation that week.

BARTLEY W. CAVANAUGH: Well, I wouldn't like to get the inference that he's always on vacation. He is also in the army and he goes on reserve every once in a while.

PAMELA THOMPSON: Well, we were sorry --

BARTLEY W. CAVANAUGH: He has the same vacation that everyone else has.

PAMELA THOMPSON: What is the dividing line between your supervisory powers and those of the Chief of Police with regard to the police department?



BARTLEY W. CAVANAUGH: The dividing line?

PAMELA THOMPSON: Yes.

BARTLEY W. CAVANAUGH: The Chief is held responsible for running the police department and I'm held responsible for saying that the police department is properly operated.

PAMELA THOMPSON: Does he select, for example, his major assistants? Although you do approve their appointment, he is the one who recommends them --

BARTLEY W. CAVANAUGH: He does. We discuss it not only with the Chief but with other - for instance, in the detective bureau, the Chief and the Assistant Chief and the Chief of Detectives and myself will discuss the appointment. The final decision is mine, but we do, in other departments and other than the police department following the same system.

PAMELA THOMPSON: Mr. Cavanaugh, in Sacramento would the acceptance of free meals from a restaurant constitute cause for discipline?

BARTLEY W. CAVANAUGH: What about it?

PAMELA THOMPSON: By a policeman ... The acceptance of free meals in a restaurant constitute cause for discipline?

BARTLEY CAVANAUGH: Yes, it would in my opinion. And when I was rather new at the job, I wondered why so many police officers - they ate on duty in the squad car, they're on the air - I wondered why they went to certain drive-ins. And I heard that they were given 50% reduction in their meals. I immediately got hold of the owner and was very upset about it. It was at the owner's request they, in drive-ins particularly, it's to their great advantage to have squad cars in and out. We have had people who did expect gratuities ... Christmas presents. They're no longer with us. We feel that our police officers are paid a sufficient salary to be policemen and policemen only. We have a provision in our charter that prohibits them from any work except police work that is okayed by the police department, such as a gathering at a baseball game or something inside the field where it's not our obligation. The ball club could hire a policeman.

PAMELA THOMPSON: Do you know whether the police department has the policy of keeping an officer on the same shift if he's going, say, to college and taking training evening classes?

BARTLEY W. CAVANAUGH: We do most anything to help an officer who is trying to get an education or benefit himself some way. We've had several officers who have gone to law school and are no longer with us, we're sorry to say. But, they have attained their education, also in the fire department.

PAMELA THOMPSON: How active a public relations activity does the police department here carry on? For example, have they any program in the school system?

BARTLEY W. CAVANAUGH: Yes. The extent of it, I don't have at my fingertips. We do have a very active business with traffic in schools. We have officers assigned exclusively to that. He works with the school department in traffic problems. Our people make appearances in schools and we conduct classes from the schools through our facilities. I would say that it's a fairly extensive program.

PAMELA THOMPSON: It just occurred to me that, perhaps, something of that nature would be helpful in this violence in connection with police officers, generally. I know my child brought home a little picture to color - you know the one the FBI sends out through the police departments. And I asked whether it was given out at school by a policeman, whether they had met a policeman. They had not. They had not seen him.

BARTLEY W. CAVANAUGH: I don't know the extent of it. I can check it. I think your suggestion is good.

PAMELA THOMPSON: Those are the only questions I have, thank you.

CHAIRMAN O'CONNELL: Any more questions? If not, thank you very much, Mr. Cavanaugh, and you're excused to ...

BARTLEY W. CAVANAUGH: Thank you. Would you like this chart of organization?

PAMELA THOMPSON: Yes, very much. Thank you.

CHAIRMAN O'CONNELL: We'll stand in recess until two o'clock.

(Whereupon the hearing was duly recessed for lunch.)

CHAIRMAN O'CONNELL: We'll be back in order. The first witness this afternoon is Mr. G. Brooks Ice of San Mateo. Come forward Mr. Ice. Would you identify yourself for our record please, and then ...

G. Brooks Ice  
Attorney at Law  
1521 South El Camino Real  
San Mateo, California

CHAIRMAN O'CONNELL: Sit down, sir. Do you have any comments that you would like to make to the committee at this time?

G. BROOKS ICE: I presume that you would like to have me make some remarks on particular sections ...

CHAIRMAN O'CONNELL: Yes, if you would like to.

G. BROOKS ICE: of the code?

CHAIRMAN O'CONNELL: Yes.

G. BROOKS ICE: Yes, there are several sections I should like to comment upon. How long do you wish me to spend at this?

CHAIRMAN O'CONNELL: Take as much time as you want. We're not exactly loaded down with witnesses this afternoon, so take as much time as you'd like.

G. BROOKS ICE: Thank you, Mr. O'Connell. Is this machine working?

CHAIRMAN O'CONNELL: Yes.

G. BROOKS ICE: First, I should like to comment upon Section 834(a) of the Penal Code of the State of California. In the first place, I should like to state that, although I'm presently in private practice and have been for a few years, I was a peace officer for fourteen years and also spent almost four years in the District Attorney's office in San Mateo County. With reference to Section 834(a) of the Penal Code, I do not think the section is fair as it is presently stated in the code and in the first place I think the constitutionality of this section is subject to a great deal of question. It seems to me to be inconsistent with the due process clause of the State Constitution for the reason that if a man is being deprived of his liberty without due process of law, if he resists that deprivation which is, in effect, guaranteed to him by the constitution, he's in violation of a criminal statute by merely defending a right which he is guaranteed by the constitution. As far as the proposed amendment, I think it's fine as far as it goes --

CHAIRMAN O'CONNELL: Which amendment is that, Mr. Ice?

G. BROOKS ICE: I'm directing your attention to page 20, second paragraph "Committee proposes the following amendment to Section 834(a) of this ...

CHAIRMAN O'CONNELL: That was an O'Connell bill of the 1961 session. That didn't do too well.

G. BROOKS ICE: Well, I think it's fine as far as it goes. However, it doesn't protect the small person who cannot afford to take the matter to the State Supreme Court. And secondly, although it does cut down on the powers of the arresting officer to sue him afterwards, it doesn't protect him against the criminal statute. I think if the word lawfully should be added just before the word arrested in the statute, that it would cure the defect from the constitutional standpoint and secondly, it would make the section a fair one.

G. BROOKS ICE: I shall read it.



CHAIRMAN O'CONNELL: All right.

G. BROOKS ICE: "If the person has knowledge, or by the exercise of reasonable care should have the knowledge, that he is being arrested by a peace officer", I think if we would add the word that he is being lawfully arrested by a peace officer is the duty, etc., I think that would cure the defect from a legal standpoint and secondly, I think it would make the statute a fair one. I might give you an example. I recently tried one to a jury, and I could not avoid having an instruction read to the jury, the words of 834(a) which almost lost the case for me. There was no question but what the - it was a most unjustified arrest. The officer even admitted that there was no disturbance going on at the time and he just wanted the man to send his guests home because the landlady requested, that's all. The man said he wouldn't do it, but he was willing to go to jail. Instead of that, the officer yanked him into the hall and used a great deal of force and arrested him. Well, he was charged with assault, battery, disturbing the peace and resisting arrest.

CHAIRMAN O'CONNELL: This section, as it presently reads, would make it the duty of the person being arrested to yield to the arrest being made by a peace officer, even though it was obvious that the peace officer was acting outside the scope of his authority. For example, if the peace officer were raving drunk and if the person being arrested should have knowledge or knew that the man was a peace officer, then he would have to submit to the arrest ...

G. BROOKS ICE: Exactly.

CHAIRMAN O'CONNELL: And as I understand it, you're criticizing the statute for giving a peace officer such broad powers.

G. BROOKS ICE: That is correct. You see --

CHAIRMAN O'CONNELL: You're suggesting that the arrested person should only have to yield to the arrest if the arrest itself was lawful.

G. BROOKS ICE: That is correct.

CHAIRMAN O'CONNELL: Now, the criticism made of the bill that I had last session which was lost heavily on the floor of the Assembly after being opposed rather vigorously by the law enforcement people around here; was that in many cases the lawfulness of the arrest itself is a borderline matter which may have to be decided ultimately by some appellate court and that if you permitted the arrested person to resist a borderline arrest that this would promote violence and that reasonably it was better to require the person to submit to the arrest and then have the thing determined in his favor ultimately, or against him ultimately, as some further point and thus, avoid violence.

G. BROOKS ICE: Actually, the way the law read in the first place, before this was added, or now if we were to add the word lawfully before the word arrested, I think the effect would be that it would deter officers from going too far in these matters and it isn't too much to expect because the laws of arrest are not very extensive. In other words, what I mean is, it isn't that they would have to determine entirely what is lawful and what is not. But, an officer wouldn't have to go to a great deal of trouble to prepare himself to be an officer to learn that under the law as it previously stood, he can make an arrest for a misdemeanor only if it were committed in his presence, unless he had a warrant. Now, it seems to me that any peace officer should know that. And most departments refresh the officer's memory quite frequently on these matters. I think any officer with any experience knows that, unless he is just one who is too much taken with his own authority. I think the average officer with any experience and a little bit of judgment would not be bothered by that whatsoever.

CHAIRMAN O'CONNELL: Prior to the enactment of Section 834(a) in 1957, the case law or common law of this state was that a person being unlawfully arrested had the right to use that force which was reasonably necessary to avert the arrest. Isn't that correct?

G. BROOKS ICE: That is correct.

CHAIRMAN O'CONNELL: And so that this change in 1957 did make a radical departure from what had formerly been the law.

G. BROOKS ICE: Very radical and you know we have taught children from the time they begin the grade schools that a man's home is his castle and so forth, that they have certain constitutional rights. They've been brought up to expect this, and sometimes they rely on it and go a little too far, rely on it a little too heavily. But, nonetheless, this is so contradictory to that teaching that under the circumstances they think that they actually have that right and it gives an officer the right to arrest a person or attempt to arrest him for something that is absolutely not against the law, and then if the man resists in any way, he has actually committed a violation of the law. And on top of that, I think, in a roundabout way, and not too roundabout, it is depriving him of due process. Whether it is or whether it isn't, I think it goes too far and I also think that it would not be too much to expect an officer would know what the rules of arrest are. And if he has learned anything about that subject at all, he shouldn't have any difficulties as a result of this section if it's amended by adding the word lawfully before the word arrested.

CHAIRMAN O'CONNELL: Before I interrupt, were you going to pass to another section or ...

G. BROOKS ICE: Well, I was almost through with that, Mr. O'Connell. I was just going to state that at the present time, when a man is charged with resisting arrest among other things, of course, some times we know that the other charges are added just to support this one. The disturbance of the peace is usually added to the charges of assault and battery because oft times they feel that they

cannot make the first charge stick. In fact, I'm guilty of doing that myself. When I was in the District Attorney's office, it wasn't a practice to do that and I'm the one who started it in our county, San Mateo County. Instead of just assault and battery I always added disturbing the peace and I could nearly always make that one stick. However --

CHAIRMAN O'CONNELL: And now the chickens have come home to roost.

G. BROOKS ICE: And the chickens have come home to roost. Now, on the other hand, when we're defending a case where the arrest was unjustified and there aren't many such cases, but there are some, we always run into an instruction in the wording of 834(a). Now a lot of people think that no one pays much attention to the instructions as read by the judge, but the trouble is that the attorneys on both sides, as you know, make a great deal of capital out of it and see that the jury in effect gets instructed on voir dire and also they get instructed two or three times during the argument and then again by the judge. So it makes it a very difficult section to get around even when the defendant is entirely within his rights. And also it, as I have said before, I do think it abrogates his constitutional rights, as presently stated. It'll be simple to change and make it perfectly acceptable.

CHAIRMAN O'CONNELL: Have you concluded with your remarks about Section 834(a)?

G. BROOKS ICE: Yes sir, I have, Mr. O'Connell.

CHAIRMAN O'CONNELL: Well, I think it might be well to get our questions over with. I'll read each section as we go along, so we can keep track of what's before us. Are there any questions of the committee to Mr. Ice about Section 834(a)? All right, Mrs. Thompson.

G. BROOKS ICE: My remarks about the other sections are more brief.

PAMELA THOMPSON: Mr. Ice, was your client charged with violating this particular section of the Penal Code?

G. BROOKS ICE: No he was not. He was charged with violating 240, 242, 415 and 148, assault and battery, disturbance of the peace and resisting arrest.

PAMELA THOMPSON: Well, actually this does not create a crime in itself, of resisting arrest?

G. BROOKS ICE: I think it does to this extent. It makes it a crime - it makes something a crime which otherwise would not be even though this is not the section with which he is charged in the complaint. You see, in the case you've read about that I tried, there was an acquittal. But the reason for the acquittal was this. On the basis of this new section, I almost lost it. I don't mind too much losing a case now and then and if I'm wrong I think I should lose it, but in this case there was an instruction on 834(a) and on that basis, the



jury listened to it very carefully. The District Attorney repeated it a half a dozen times and I almost lost the case on account of it. The reason I did not is, I argued with the jury that the man was perfectly willing to go along with the officer and he was not resisting arrest. He was only resisting the attack upon his person. And that was the reason for the acquittal.

PAMELA THOMPSON: I see. We asked Mr. Burns from the Los Angeles area last year at a hearing about this particular section, whether it created a crime and he said "No, it's just that you have a duty not to. It doesn't make it a crime. It's not illegal now, if you would forfeit your advantageous position in a civil suit, because the law says you shall not use force." But that that was the only effect of this section. We were curious at the time whether it didn't actually have the effect that you're saying that it does have.

G. BROOKS ICE: Well, you see here was an example of it, a case I just tried. And although he was not charged with that section, it was the means of almost convicting him of violation of Section 148 of the Penal Code.

CHAIRMAN O'CONNELL: 834(a), read together with 148, would seem to enlarge 148, wouldn't it?

G. BROOKS ICE: Indeed it does. Yes, it does. It's just the same thing as if 834(a) were a continuation of 148 without even a new section number being added. I think this is the answer to the gentleman who said that it only affected civil rights.

CHAIRMAN O'CONNELL: We'll pass to the next section.

G. BROOKS ICE: 835(a), "Any peace officer who has reasonable cause to believe a person to be arrested, has committed a public offense, may use reasonable force to effect the arrest" and so forth. Then it says, "a peace officer who makes or attempts to make an arrest need not retreat or desist" and so on. I haven't much quarrel with that section, but I think it should be improved a little bit. For example, it abrogates the present law of arrest to some extent, or I mean the law before 1957. Because, repeating, a police officer who has reasonable cause to believe a person to be arrested has committed a public offense; now, what is reasonable cause? A neurotic neighbor's report of a very minor misdemeanor within the neighborhood? You know how often people - there are a lot of neurotics. If a man has ever worked in a District Attorney's office, he knows the myriad of ridiculous complaints that come to him. He just dismisses most of them without even issuing a warrant, or complaint rather. Now, if the mere fact that some neurotic neighbor makes a complaint to a peace officer, I don't think that should be reasonable grounds for making a misdemeanor arrest. If it's a felony, yes, always. But as far as a misdemeanor is concerned, I think that is practically giving him the right to make an arrest upon any kind of hearsay for a very minor offense. I don't think that it is necessary to do that.

CHAIRMAN O'CONNELL: Your criticism probably goes to the subjectivity of the term reasonable cause, wouldn't you say?

G. BROOKS ICE: Right.

CHAIRMAN O'CONNELL: And what's reasonable cause to one judge might not be to another. Cases involving search and seizures pretty well illustrates this business. It's pretty hard to tell sometimes where an officer has reasonable cause and where he doesn't.

G. BROOKS ICE: That's right.

CHAIRMAN O'CONNELL: How would you remedy that?

G. BROOKS ICE: I would put the word lawfully, well, let's see ... I think we're just as well off without that section if we would delete the first paragraph. However, the second paragraph, "a peace officer who makes or attempts to make an arrest need not retreat" and so on. I think if we would add the word lawful arrest - the word "lawful" just before the word arrest and delete the first paragraph, I think it would be a good section. I might refer to one thing, Mr. O'Connell, I used this argument in a trial recently and it's Ware vs. Dunn, 80 Cal. Appellate, Section 936, 183, Pacific Second 128. And in his decision, Judge White - I'll leave a copy of this with you - stated from time in memorial, the most conspicuous feature of history has been the struggle between liberty and authority. Today, as in ages past, we are not without tragic proof that the exact power of some governments to ignore the inalienable right of the individual to liberty and to resort to lawless enforcement of the law is the handmaiden of tyranny. No higher duty, no more solemn responsibility rests upon the courts than to maintain the constitutional and statutory shields ... to preserve liberty under law and protect each individual from oppression and wrong from whatever source it may emanate. I think that pretty well states the problem. In other words, we have to hit a happy medium between authority and --

CHAIRMAN O'CONNELL: Individual liberties.

G. BROOKS ICE: Individual liberties, yes. It's a little hard to do, I know, and there is quite a bit of overlapping. If I may go on to the next section ...

CHAIRMAN O'CONNELL: Any questions about 835(a)?

ASSEMBLYMAN WOLFRUM: Could I ask a fast question on that? On 835, as I recall on this, there was no clear definition in the code as to the amount of force that could be used in these situations and there were three or four other sections that had different definitive terms as to the amount of force that could be used. And this language that was cast in this section, in the second paragraph, I think was an attempt to lay down a rule as to how much force could be used in this type of situation. It's different still from what a warrant arrest would be, isn't it?

G. BROOKS ICE: Yes, well, I think there - the amount of force one may use to resist such an arrest should certainly be very much limited.

ASSEMBLYMAN WOLFRUM: You think there should be some distinguishing factor between arrest on a warrant, for example, as an arrest on observation or information of belief, which in effect is what this arrest may be.

G. BROOKS ICE: I see what you mean, however, I think --

ASSEMBLYMAN WOLFRUM: Can we make a distinction of this kind?

G. BROOKS ICE: I think we can make some, for this reason. When a warrant is shown to a person who is being arrested, he knows he is being arrested subject to a court order. And I think it appears to the individual to have more force and effect than if an officer is just making it on the spur of the moment. It's true that not everyone understands the mechanism of law enforcement and how a warrant is obtained, but nevertheless, it shows a little more force and effect. It is, in effect, an order of the court and the magistrate has issued that warrant and, of course, at times an arrest is made when the officer doesn't have the warrant on his person, but certainly if he states it's pursuant to a warrant, and a person knows that, I should think that it would - he would not be encouraged to resist the arrest as much as if he thought the officer was making an unwarranted arrest upon him.

ASSEMBLYMAN WOLFRUM: In effect, then you're letting every suspected lawbreaker make the decision as to whether or not the arrest is lawful. I think this is the point we discussed in connection with a previous section.

G. BROOKS ICE: That is true.

ASSEMBLYMAN WOLFRUM: But, you're letting each individual lawbreaker, in effect, or alleged lawbreaker, make a decision as to whether or not his arrest is lawful. And you're going to have some fisticuffs out on the street --

G. BROOKS ICE: Perhaps I didn't make it clear, because I don't think that the person being arrested is going to rely upon this section. I think it's the officer who is going to rely upon it. I think it's the other way around. For example, if John Doe is being arrested by an officer and he thinks the arrest is unlawful, this section isn't going to encourage him to resist the arrest. Secondly, the absence of this section isn't going to encourage him to resist the arrest. I think the effect would be that most officers wouldn't be affected at all, but that a few who do not know what the laws of arrest are and could care less would take advantage of this situation because they are the ones who would read that Penal Code, supposedly, and not the layman, the usual individual one runs into in these cases.

ASSEMBLYMAN WOLFRUM: Well, if we're discussing a problem, lack of police training, I think that's one area and certainly there is probably some valid cause for complaint. But I don't see where



changing this section would really change the few that we might describe as being people who would not be bound by any law, in terms of the peace officer. In other words, if we accept the premise that there are a few who are violating this presently, I don't see what a change in law is going to do for them.

G. BROOKS ICE: Well, I think what it would do is that it would ... I think this, particularly 834(a), creates a new crime. And I think that the reason this would not, by changing the law, would not increase the number of times the person resorts to fisticuffs is this: Most people - the man in the street doesn't take the Penal Code. I wonder how many officers read the Penal Code, from start to finish. Very few people have read what the laws of arrest are, they don't know. A police officer should know it. You can read them all in five minutes.

ASSEMBLYMAN WOLFRUM: I agree.

G. BROOKS ICE: And the man who wants to become an officer certainly has the duty to read them. I don't know how many times I've read them.

ASSEMBLYMAN WOLFRUM: You can't get any argument out of me on that. I would concede the point that this should be the first, probably the first, area of training that a peace officer should be subjected to is the laws of arrest. This is probably the most important area that he is going to be involved in.

G. BROOKS ICE: I think you're quite correct in that. And I think also that it's something they can't have - their memory should be refreshed on it very frequently. No one knows enough about his job, I don't care - his profession or whatever it is. And we all get lax in some fields from time to time. But I think the police officer should be very cognizant and very much aware of what those laws of arrest are. They are not very extensive in California. Two or three pages would cover the subject. And I think that is the one thing they should become very familiar with and they should stay familiar with when he is acting as a public officer and clothed with authority.

ASSEMBLYMAN WOLFRUM: I agree.

G. BROOKS ICE: And I don't wish to do anything to take away the lawful powers of an officer either, because I think in many fields and some that are here, their power should be extended, not curtailed.

ASSEMBLYMAN WOLFRUM: I'd like to hear about a few of those.

G. BROOKS ICE: Well, I'll come to one in a minute. Here referring to 842, an arrest by a peace officer acting under a warrant is lawful even though the officer does not have a warrant in his possession, at the time of the arrest. If the person arrested, so requests, the warrant shall be shown to him as soon as practicable. The section previously said that if a person making an arrest is acting under the authority of a warrant, he must show the warrant, if

required. Now, that isn't practical because - I mean the way law was before 1957 - many times there is a man out there on the road or on the beat, he receives a call, so-and-so is wanted or maybe he's seen it on a hot sheet or maybe all of the officers have been told that in a briefing that evening or that morning or they've known it for a month, that somebody is wanted by a warrant. Now, obviously every officer doesn't have that warrant on his person. And if he has been told by a higher officer that they have a warrant, even though he hasn't seen it -- sometimes one department will call another one, "We hold a felony warrant for so-and-so or we hold a misdemeanor for so-and-so". Well, if he knows that is the man, and he wishes to make an arrest, he may tell the man, "We have a warrant for your arrest." The man says, "I want to see it, otherwise I'm not submitting". Well, the officer can't show him. And a lot of these warrants are not only misdemeanors, they're felonies, a serious matter. I think that he should be permitted to make that arrest without showing a warrant, but that the warrant should be shown to the arrested, the accused as soon as practicable under the circumstances. I think that's just the law of reason, one might say. I think that it's curtailing law enforcement if we do require that that warrant be shown them immediately. I think as it stands that this section is a very good one. I think it's only right that a person should be shown a warrant as soon as it's practical, but it may be two or three hours before the warrant can be obtained. Maybe a warrant officer has it, trying to serve it. Someone else picks up the man - by the time you can locate the man who has the warrant, it's going to take a little while. And I think it's just what is reasonable under the circumstances and I think as the law now stands, it is an improvement. That's one of those sections that I was referring to --

ASSEMBLYMAN WOLFRUM: Well, that's present law.

G. BROOKS ICE: I know it is, but I don't think it should be changed either, Mr. Wolfrum. Now Section 847... where this as it now stands, the statute says "no cause of action" and so forth shall arise against any peace officer acting within the scope of his authority for false arrest or false imprisonment rising out of an arrest when - I see nothing wrong with that - and particularly in Section B where it says when such arrest was made pursuant to charge made upon a reasonable cause of the commission of a felony by the person to be arrested. I think that's ... that section is necessary, and referring again to Section C, when such arrest was made pursuant to the requirements of the Penal Code Sections 142, 838 or 839. Now, I think we owe this protection to the peace officers because Section 142, if it's the one I think it is, states that he must accept - if a citizen makes a suit of his arrest and turns this person over to a peace officer, if he does not accept the custody of that person, he himself is guilty of a crime. And I think that Section C says he shall not be liable for civil arrest when such arrests was made pursuant to the requirements of the Penal Code Sections 142 and so forth. And I think as long as 142 is in the Code, we certainly owe this protection to any enforcement officer that this 847(a) stands as presently written. If there are no questions, I will pass on to --

CHAIRMAN O'CONNELL: What do you think of the committee's recommendation that Section 847 should be amended to make it clear that it does not purport to hold that a lawful arrest can validate a subsequent false imprisonment?

G. BROOKS ICE: Yes, I think that should be made part of the statute for this reason, a person could be lawfully arrested and he could be unlawfully detained thereafter and, therefore, it shouldn't validate that subsequent false imprisonment.

CHAIRMAN O'CONNELL: I'm not sure that 847 does that, but ...

G. BROOKS ICE: I'm not either.

CHAIRMAN O'CONNELL: The committee felt that if there was any question that it might relieve one of his civil liability for false detention, that the section should be amended to make it clear that it does not.

G. BROOKS ICE: Well, I don't know whether it does or not. It may, but I think if a short paragraph were added to that effect, it certainly wouldn't hurt anything and it would guarantee the person's rights. It wouldn't take up much space and I think it would be worthwhile.

ASSEMBLYMAN WOLFRUM: Do you know of any cases of this kind, John?

CHAIRMAN O'CONNELL: No, I don't know of any such cases. I've never heard of such a case, but to prevent such a case from arising I just didn't think it would hurt to spell it out. I had a bill on the subject at the last session which some of you fellows didn't buy.

G. BROOKS ICE: I don't know of any instances happening. It's possible, it could, but I don't see any harm that could be done by adding it.

ASSEMBLYMAN WOLFRUM: I think it's a separate situation. I don't see where there would be any blanket authority in this section for conceding that you have no case for false imprisonment if something later occurred that would justify a case of this kind. Nothing arises that I know of within my experience on the thing.

G. BROOKS ICE: If I may go back to 836 again ... As the law stands it states presently, "whenever he has a reasonable cause to believe that a person to be arrested has committed a public offense in his presence". It seems to me that it's a little bit redundant. He should certainly know himself whether it's been committed in his presence or not. Although the way the law used to read, "when a felony has in fact been committed." Now, that ... I like the way it is presently, because there has always been a felony committed, and I think if he has a reasonable cause to believe that a felony has been committed - that should be enough. I sort of skipped back a little there. If I may go on to Section 849, I think this is an improvement.



I see the committee has recommended the addition of the following section: "A person is not brought before a magistrate within the time required by law" ... I think he should be required to explain to the magistrate why and it will prevent something like that from happening very often. It may happen once or twice, but if it's unjustified, the magistrate will certainly call it to the attention of the Chief of Police or Sheriff to the situation and it will probably result in their local practice being remedied. That's the only effect I could see that it would have. Now, 849(a) --

CHAIRMAN O'CONNELL: That one got vetoed. Isn't that right, Ed? Can't imagine why. Amending 849 to require an explanation to be given of why the man wasn't brought before the magistrate within the time prescribed by the law?

G. BROOKS ICE: Well, I just know ...

ASSEMBLYMAN WOLFRUM: It's a 48-hour law now. That Dragna case ...

CHAIRMAN O'CONNELL: 48 hours plus, now.

ASSEMBLYMAN WOLFRUM: Sundays and holidays, huh?

CHAIRMAN O'CONNELL: The next court day. Wasn't that your bill, Chet?

ASSEMBLYMAN WOLFRUM: Yes, I think that one was.

CHAIRMAN O'CONNELL: No.

ASSEMBLYMAN WOLFRUM: No?

G. BROOKS ICE: Of course there has been a practice ... I don't know how much they do it anymore, but I know years ago, we used to book them en route, sometimes when they weren't en route anywhere except to the local police station. And after they were lodged there they were still en route. That would extend it, of course. And the saying used to be, "Well, if they want out, let them get a writ of habeas Corpus". We just book them enroute and hold them longer if we want to. By that time, they'll start talking. Now, I don't think many departments do that. I think the Dragna case pretty well took care of the situation.

There is another way around it anyway. An easier way is to get bail posted and that takes care of the situation. And if they're allowed a phone call, why they should get someone who could put up bail for them in normal instances. It's easier than a writ and much more effective.

I've sort of digressed a little. Referring to 849(a), which in effect gives an officer a right to release a person if he finds that he doesn't have any cause to hold him, I see no reason why he should have to hold a man for another day or two, if he arrests him on

Saturday afternoon, can't get him before a magistrate, maybe the man can't put up bail. Why should the officer have to hold him until Monday to take him before a magistrate when, in his own mind, the man should not have been arrested? It was an error made by someone, and justice requires that the officer have the right to release him. The only thing about the section that doesn't look right to me is this: Subsection B, paragraph one, "Any record of such arrest shall include a record of the release", that's all right - "the release hereunder and thereafter shall not be deemed an arrest, but a detention only." Well, how could the mere fact that he releases him give the officer the power to determine whether or not it's an arrest. And I don't think that anyone has that right to --

CHAIRMAN O'CONNELL: Unring the bell?

G. BROOKS ICE: Or unsay something. That's exactly what it is. You can't unring the bell and I don't think the law should give ...

CHAIRMAN O'CONNELL: I think that may have been put in there for the purpose of permitting a person detained under such circumstances to say truthfully, later on, that he was not arrested. For example, in a job application or something like that.

G. BROOKS ICE: Well, maybe, I didn't think of that. I believe that after you explained that to me, I believe perhaps it's better the way it reads. I think so. I see here that James Martin McGinnis didn't think so in his testimony before the board - committee, rather. But --

CHAIRMAN O'CONNELL: I think he was critical of the section on other grounds.

G. BROOKS ICE: But, I did take exception to that one portion of the statute only and now that you've explained that to me, I think it's better the way it is. It's more fair because if the man was arrested unjustifiably, later maybe he applies for some type of employment or civil service, why should he be handicapped. He can truthfully say "No, I've never been arrested." I think I see your reason for it and I think it's right.

As far as 850 is concerned, I have no comment. I think it's fine the way it is. And I'm almost through. I'm referring to Section 1524. I think that the statute made the law read what it should always have read. The way it stands now, I think it's fine the way it is.

CHAIRMAN O'CONNELL: If it's constitutional.

G. BROOKS ICE: If it's constitutional. I don't know about that.

CHAIRMAN O'CONNELL: There is considerable doubt about it in the minds of many. I don't know \*\*\*

G. BROOKS ICE: Well, that's one that I'm not going to say I think should be changed because I think it's unconstitutional. I think that's one that eventually will probably get to the State Supreme Court and I'll let the justices thereof determine whether they think it's constitutional or not. I haven't any other comments to make except I did think that 834 should be changed. I think that is one that should be changed more than any other because in the first place, it's unfair and secondly, I think there is a greater question of its constitutionality. And if it should be constitutional, I think it's very borderline.

CHAIRMAN O'CONNELL: You really mean 834(a).

G. BROOKS ICE: I beg your pardon, 834(a). And then, I think 835(a) is quite similar and I think the word "lawful" should be added to that. Other than that, I think there could possibly be a few changes made in these other sections. I think they're pretty good the way they are.

ASSEMBLYMAN WOLFRUM: You suggest an amendment of lawful for inclusion in 834(a)?

G. BROOKS ICE: Yes, I did.

ASSEMBLYMAN WOLFRUM: Mr. Ice, where did you want to put the word lawful? Lawfully arrested?

G. BROOKS ICE: If a person is - if it would read this way, "if a person has knowledge or by the exercise of reasonable care should have knowledge that he is being lawfully arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest." I've seen your Legislative Counsel comment upon that, it said that unless the word "lawful" is read into it, this section changed the law. Well, I think that if the word "lawfully" were added to the statute I think that there is no question of whether it would be constitutional or not. Not only that, it would be fair. I think that's the one word that needs to be corrected.

ASSEMBLYMAN KNOX: \*\*\* Well, what you're saying is that there is no real need for this section at all. Isn't that true?

G. BROOKS ICE: Well ...

ASSEMBLYMAN KNOX: I mean if a person is being lawfully arrested, he is being lawfully arrested and he's not ...

CHAIRMAN O'CONNELL: You put the word lawfully in there and then you'd give the arrested - the unlawfully arrested person the right to resist without violating the section.

G. BROOKS ICE: Of course, he can't use unreasonable force or a weapon or something like that.



ASSEMBLYMAN KNOX: Well, we're talking about reasonable force in any case. I think in even, under the common law it's only reasonable force, or the force necessary ...

G. BROOKS ICE: That was the common law and I think there's a statute of California, too, I can't quote the number. Actually, if this word were added, the law wouldn't be changed very much from what it was prior to adding 834(a).

CHAIRMAN O'CONNELL: You're not aware of any decision of the courts of this state since the enactment of this law in 1957 which considered whether it applies only to lawful arrests?

G. BROOKS ICE: No, I am not.

CHAIRMAN O'CONNELL: There's been no - If you had lost your case, we might have had a good test there.

G. BROOKS ICE: Unfortunately, my client couldn't afford for me to take it up on appeal. That's the problem involved, sir, in these cases. Actually, one or two things has happened. Either the few people - I don't think there have been many who have been convicted as a result of this new code section have not thought that it was worth while to take it up on appeal. Maybe the fine was a couple hundred dollars and it was just economical and practical and it was only a misdemeanor and they couldn't afford it, so it wasn't taken up. On the other hand, I think if there had been a ruling on it, I think that in the Annotated Code, there would be something to that effect and secondly, I think the section would have been changed by the Legislature before this if it had been found unconstitutional, anyway. So, I just presume it hasn't been appealed, at least I haven't come across any cases.

CHAIRMAN O'CONNELL: Well, we've got lots of unconstitutional laws on the books that we can't get removed for one reason or another.

G. BROOKS ICE: I imagine that most cases that were tried under that section, I don't think have been very many, I mean cases where that resulted in conviction. There may have been a few because I think that most arrests which have been made maybe the person wasn't guilty but the arrest was lawfully made in most instances. A warrant or else a misdemeanor - it was committed in the officer's presence. I think most of those arrests were valid arrests whether the person was guilty or not and, therefore, this is something that hasn't come up very often. That's probably one reason it hasn't been appealed or at least I don't know if it has. Another reason is perhaps the attorney was fortunate as I happened to be in the last one I tried and got an acquittal. Or in the third place, the client just probably couldn't afford to appeal it. And the officer - and the attorney didn't feel that he could appeal too cheaply because, after all, a lawyer's time and advice are his stock and trade, to quote Lincoln.

CHAIRMAN O'CONNELL: Are you familiar with Section 853.6 of the code? Because it's not discussed in the committee report, but I think you may be familiar with it. It's the section which deals with the use of citations for misdemeanors under state law. It provides that in any case in which a person is arrested for a misdemeanor under state law, it's within the discretion of the officer to cite him to appear rather than to take him into custody. So far as I know, no general use is being made of this section anywhere in the State of California other than for traffic offenses -- fire law violations. These may be a very limited class of offenses. In your experience as a district attorney and as defense attorney, would you say that it would be feasible to make more liberal use of the citation procedure for other misdemeanors, for example, violations of gambling laws, and that sort of thing.

G. BROOKS ICE: Well, if we had extensive use of it, I think it would be a useful tool in the hands of the enforcement officers. Number two, it would be more convenient for the person arrested, who may or may not be guilty. Of course, if it were a high misdemeanor they would no doubt take him into custody, if it's in the discretion of the officer. But, for example, take a minor neighborhood dispute that happens on Saturday night, can't get a warrant until Monday, or a husband and wife dispute. Sometimes you have to take one of them into custody to keep someone from badly being injured, but -- .

CHAIRMAN O'CONNELL: To cool them off.

G. BROOKS ICE: --at the same time there are many times when a citation could be issued. Of course, one can always swear a complaint on Monday and get a warrant issued, but if a person is served a citation to appear, it has a cooling off effect on them, at least I should think that it would. And number two, the officer doesn't have to take them into custody. You might get around some of the objections to 834(a) as it now stands. And at least the officer isn't worried about making an unlawful arrest -- that is imprisonment. He isn't worried about possibly being sued. He just gives the man a citation. It can be dismissed very easily by the judge. The man doesn't have to go into custody, doesn't have to try to find bail, doesn't upset his family and suppose he says, "I won't sign it". What's the difference? The highway patrolman if someone says, "I won't sign it", can take them into custody, sure. But, half of the time, he says, "Well, here you are" and gives it to him, anyhow, swears to a complaint, the warrant is issued. So, what's the difference? If a man doesn't sign it, he doesn't have to take him into custody, so you have the same situation here. If used judiciously, it would be a useful tool in the hands of enforcement officers and also be much more convenient for the accused, I should think.

CHAIRMAN O'CONNELL: I don't believe that this section requires a signature by the cited person. It's just a notice to appear.

G. BROOKS ICE: All the better. No, I haven't seen it used for anything except for traffic violations. And in the absence of

experience with that particular procedure I could be wrong as to how it would work out. But, I think it would work out very well. I don't see why it wouldn't.

CHAIRMAN O'CONNELL: Here's an example of the kind of case I have in mind. In fact, two kinds of cases. I was in the municipal court in San Francisco Monday representing a misdemeanor and while waiting for my turn, the court considered three or four cases of defendants who had been charged with receiving unemployment insurance benefits when they had income during the benefit week, which is a misdemeanor under the U.I. Code. And one of these defendants had been arrested at his home on Friday night, couldn't make bail and was held in the city prison until Monday morning and then he was charged with this crime of having taken \$55 when he wasn't entitled to it. The judge ordered restitution and I don't know on what theory he did it, but he didn't convict him of the crime. But, at any rate, it did seem to me this is a class of cases where the citation procedure ought to be used. There is no reason to put a man in jail for a minor offense like this.

G. BROOKS ICE: It seems that some misdemeanors are very minor matters, and I don't think it's good enforcement to clutter up the courts too much and officer's time when it's so precious, when there are so many things they can do with that time. \*\*\* serious crimes.

CHAIRMAN O'CONNELL: We're crowded up in jails, too. Practically all the jails of the state, as Mr. Kilpatrick can tell you, are suffering from a good deal of congestion. Could be avoided, it seems to me, to some extent, or alleviated by more liberal use of the citation procedure. Another case we had there Monday morning was - there were ten people, nine men and one woman, who were arrested on Friday night, again, for engaging in a crap game. And I think all but one of them made bail. It was set at \$25. One person couldn't make it, so he had to stay in jail over the weekend. The rest of them made the bail. And they all showed up. They were all guilty of having a private little crap game in a man's home. Well, requiring people to make bail or to spend a weekend in jail for offenses like that doesn't seem to me to be very reasonable.

G. BROOKS ICE: Look how much money it would save the taxpayers in addition to the convenience to both the accused and the police officers, the police departments. It's worked very well in traffic offenses. I don't see why it wouldn't work very well with minor offenses of all kinds.

ASSEMBLYMAN KNOX: Do officers normally carry blank forms of some kind that would be appropriate to hand out citations or ...

G. BROOKS ICE: Not that I know of. I've never seen --

ASSEMBLYMAN KNOX: Most of them have a vehicle --



CHAIRMAN O'CONNELL: They don't do it because it's policy generally not to use the citation procedure.

ASSEMBLYMAN KNOX: I mean, the vehicle's more adapted to that, wouldn't it ...

ASSEMBLYMAN WOLFRUM: They tried it in a few classes of cases in L.A. at one time and the non-appearance problem, similar to what occurs in traffic warrants, reared its ugly head. About one case in ten, I think, on traffic warrants - or on traffic citation goes to warrant. So, you have this added expense of creation of warrants, and people who serve the warrants and running these people down. And a similar situation existed on - we were using them for merchants putting merchandise on the sidewalk or too far out from the building line, that sort of thing. And they weren't very effective. It was tried on a small scale at one time in the Los Angeles Police Department.

G. BROOKS ICE: I don't know. It appears to me that it should work well in most localities. However, maybe it didn't work too well because it doesn't have universal recognition. If it were used \*\*\* ...

ASSEMBLYMAN WOLFRUM: Then you get into the same complaint about failure to sign and I don't know whether it's a requirement or not. In some cases where you should get a signature, but you can have the same kind of situation there where a man won't sign. He doesn't feel he's guilty of anything and he doesn't want to sign, so you get into a battle there. And you eventually end up with a restraint situation.

G. BROOKS ICE: Well, what would happen if it consisted of a notice whereby the officer signs it and hands it to him and he doesn't have to sign it. Then if he doesn't, why he would be treated exactly like a traffic citation, except they are required to sign those things, but ...

ASSEMBLYMAN WOLFRUM: Well, he's released or, on his own recognizance, upon the basis of his signature.

G. BROOKS ICE: That's right. But, of course he could have a notice to appear and know that if he doesn't a warrant will issue, which is the same thing as would happen even if he's released on or ...

ASSEMBLYMAN WOLFRUM: The fire department uses them in L.A. for smoking in enclosed areas and bonfires and that sort of thing. It seems to be effective there.

G. BROOKS ICE: The answer might be one of the two different

types. It might be that it could be used generally or maybe as a start could be used for certain types of offenses only and if it works well there, gradually extended. I don't know. It might be the answer. In answer to your question about forms they carry, the only ones I know of are the highway patrol used to carry a warning citation. Where if someone has faulty equipment, they have to get it repaired, then they have the regular citation of arrest to appear, which the person signs. But, I have noticed a few departments carry a little pad - the officers carry a little pad with them for purposes of citizen's arrests. And if those things are - cause a lot of trouble and at the same time, if a citizen does make an arrest, and turns the party over to the officer, the officer has them sign a form. Now, I ran into that a few times while I was in the District Attorney's office, and I know those citizen's arrests caused me more headaches than most anything else. But they did carry a form of that kind with them. And I think it was the San Mateo police who carried them, as I best recall. At least it was a little better than just having someone's word for it. The person who signed it thought they were obligated to be in the District Attorney's office on Monday morning and at least take up the matter of the complaint being issued. But I think that a simple little form of citation could be devised.

CHAIRMAN O'CONNELL: Mr. Francis.

ASSEMBLYMAN FRANCIS: Mr. Ice, I think that in our county the citation has worked out very well, particularly over on the coast side. I recall now when I was requested to introduce this bill that they had a real problem because there was so much transportation time that was required to tie up a peace officer to bring him over to the other side of the county to incarcerate him or book him or whatever was required and consequently counties that are in a similar situation such as ours, San Mateo County, well - it has been very effective. And I know they've been very pleased and satisfied with its effects.

G. BROOKS ICE: I might add this. If they did start using it more extensively, the citation system might run into this. The counties that liked it could use it and others wouldn't have to. In other words, if it fitted their particular situation ...

ASSEMBLYMAN FRANCIS: Well, it is permissive.

G. BROOKS ICE: Yes, but I mean -

ASSEMBLYMAN FRANCIS: I remember at the time we were trying to get the bill through, there were some strong objections, if you want to call them high misdemeanors, at least they're serious offenses, like drunk driving and so forth and they felt that this perhaps shouldn't be discretionary with the police officer. But, I haven't heard of any problems in that respect.

G. BROOKS ICE: I haven't. It seems like it could be worked out with the officer in charge who could instruct his police officers in what instances it should be resorted to and they could make it fit their local situation which I think would streamline police procedure considerably. At least I think they would be very helpful. At least, I know I would like to try it if I were an official of a police department in certain cases.

CHAIRMAN O'CONNELL: Any more questions? Well, thank you very much, Mr. Ice. You've been most helpful and we certainly appreciate the contribution you've made this afternoon.

G. BROOKS ICE: Thank you, gentlemen. It's been a pleasure.

CHAIRMAN O'CONNELL: Is Captain Waldt in the audience? Did you want to testify this afternoon?

CAPTAIN WALDT: Not at this time \*\*\*

CHAIRMAN O'CONNELL: All right. Mr. Thomas? Robert Thomas. Mr. Kessel in the audience? Is there anybody else who would like to testify this afternoon? If not, we're adjourned until tomorrow morning at 10 a.m.



The Thursday morning session of the public hearing of the Assembly Interim Committee on Criminal Procedure, was convened at 10:00 A.M., Thursday, December 14, 1961, in Room 2170 of the State Capitol, Sacramento, California. Assemblyman John A. O'Connell, Chairman, presiding.

CHAIRMAN O'CONNELL: We'll come to order. We have two or three more members who are knocking around the halls here, and who will arrive shortly, I think. We may as well proceed, however, with those who are here now. I'll introduce first on my extreme left, Chester Wolfrum from Los Angeles, John Knox from Richmond, and on my extreme right, Vernon Kilpatrick from Lynwood, Committee Secretary Maxine Moore and Committee Consultant Pamela Thompson. This is a continuation of the hearing of the Assembly Interim Committee on Criminal Procedure on the subject of the laws of arrest and of police practices in general. We had several witnesses yesterday and we'll continue on with the first witness today being Mr. Norman Smith. Mr. Smith here? Just take your - sit down there and be comfortable. Would you identify yourself for the record?

Norman Smith  
California Director  
Agricultural Workers Organizing Committee  
of the AFL-CIO

NORMAN SMITH: Mr. Chairman and members of the committee I want to thank you for an opportunity to come before the committee. I have no prepared statement and the incidents to which I would largely refer will cover a period of two and a half years. I was assigned the task by the AFL-CIO of attempting to build an organization of agricultural workers. I took this job on the 16th of April, 1959, and our activities have covered several counties. In most of the counties where we have worked, we can have no complaint about the enforcement of the law or the attitude of the law enforcement officers. I realize that it is a very controversial subject and one in which there is tremendous opposition and has been for a period of years. But there are one or two counties in the state that I think this committee should be appraised of. Some of the activities that are carried on there and if the laws are not being properly enforced, that something be done to tighten up the enforcement of them and the practices of some of the courts when we become involved in labor disputes. I think that we are entitled to make a plea that the procedure of applying restraining orders in the state courts, that some consideration be given to the state courts being brought into line with the federal courts, along the lines of the Norris LaGuardia Act. Because the practice is as it is now, that if we become involved with a grower, they merely have to go into court and ask a judge for a restraining order and these restraining orders are usually effective for about 10 days before you can get around to a hearing. By that time, in many instances, the crop, or at least the first picking of the crop, is complete and --

CHAIRMAN O'CONNELL: Excuse me, Mr. Smith. This is Assemblyman Francis - Louis Francis from San Mateo. Did you --

ASSEMBLYMAN FRANCIS: Sorry to interrupt, but before you proceed any further I wondered whether this committee had the jurisdiction over restraining orders ...

CHAIRMAN O'CONNELL: Well --

ASSEMBLYMAN FRANCIS: -- particularly since we have the Committee on Judiciary. So, I think that perhaps he may be misinformed or something. And that he ought to devote most of his testimony on restraining orders, this is probably not the proper committee.

CHAIRMAN O'CONNELL: I had anticipated that Mr. Smith would get around to the tie-in between the restraining orders issued and labor disputes with the enforcement of those restraining orders by law enforcement agencies. We do have a committee of the Assembly, the Industrial Relations Committee, which considers --

NORMAN SMITH: Well, I understand that and I don't want to belabor this committee with anything that is not appropriate.

CHAIRMAN O'CONNELL: Yes.

NORMAN SMITH: But, the subject cannot be separated when you get into actual practice in the fields. Because it is the law enforcement officers --

CHAIRMAN O'CONNELL: Mr. Knox.

ASSEMBLYMAN KNOX: Have you had any problem of police attempting to enforce civil restraining orders? Or have - when a restraining order has been granted, have there been any difficulties in obtaining compliance with the restraining order?

NORMAN SMITH: Well, we ordinarily have tried to comply with --

ASSEMBLYMAN KNOX: No, I understand that, but I mean sometimes you can't control everybody.

NORMAN SMITH: We have the - we have the one case in Imperial County. I don't think there was any question of the judge's prejudice. It's something that has been belabored for a long time, but Judge Heald of Imperial County who issued a blanketing order against all picketing before he got through with it. And of course, by that time the - this had become such an involved question, that we complied with the regulation because frankly, we had more legal matters than we could take care of then. And I don't want to belabor this committee on something that is not appropriate to it. But, I do think that this committee, as well as the others, and I will from time to time

try to appear before the other committees, and I do think that you should be appraised of it. Now as to the real enforcement by the police officers of this state, as I say in most counties, we have had but very little trouble. I think San Joaquin County, the county where our principal office is located that the sheriff in that county is second to none in the state. And I realize that there will be an election there soon, but I am not a voter in San Joaquin County and I am not campaigning for him. But in my almost 40 years of experience in labor matters, I would rate him at about the second best enforcement officer that I have had anything to do with. There can be no complaint.

I would like to contrast that with Imperial County. San Joaquin County, with a great deal larger population than Imperial County, has 105 reserve deputies, and in Imperial County we found nearly 500. And these 500 in the arguments that we had there this past year, nearly all of the deputies were people that had a conflict of interest in that they were the people who were directly interested in trying to keep organization out of Imperial County. The most glaring of those being the head of the Imperial Valley Lettuce Growers and Shipping Association, Mike Schultz, who was a deputy. And almost every grower, almost every permanent foreman, almost every implement dealer, almost every fertilizer dealer in the county was deputized and all of them certainly had an interest in the conflict that was going on there because they were very much interested in preventing the agricultural workers from securing an organization. And they have maintained this over a long period of years. And I would like to submit to the committee a photostatic copy of the number of deputies that there are in that county.

In Lake County, we found a very peculiar situation. There again, I'm at a loss to know whether this committee would be concerned with it or not. But, I found that in Lake County the county has no road rightaways. They merely have an easement from the property owners to put the road through the property and then in the event of a labor dispute, if a car of the pickets or any of the labor officials is parked off the blacktop, you're immediately confronted with the threat of being arrested for trespass. And if you are going to stop about a place like that, you obviously can't park on the blacktop and that is a situation that we find - that we hardly know how to cope with.

Another situation that exists in this state is the trespass laws which I think this committee should be appraised of. There is a number of other committees that I know are concerned with it. But, there has over a long period of years been in existence in this state many labor camps which we feel become at least quasi hotels. And we do not have the opportunity to go into them even though the people who live in those camps invite us to come in. And we are now engaged - one of our members is engaged in a suit which will test that and we had the same issue raised in Imperial County, in the so-called Corona case there. And the Supreme Court there did overrule one of the



indictments that had been made by a county grand jury. And in that they said that in their opinion there could not be a trespass. And of course it was involving the question of kidnapping. Now, in the cases that --

CHAIRMAN O'CONNELL: Excuse me, Mr. Smith, but if one of your people wanted to go into one of these labor camps to talk to the people living there with perhaps the idea in mind of organizing them, that the farmer is taking the position that your man is trespassing when he goes on the land to get to the labor camp?

NORMAN SMITH: Yes. And it is not so much farmers as it is the contractors.

CHAIRMAN O'CONNELL: The farm labor contractors?

NORMAN SMITH: The farm labor contractors. They --

CHAIRMAN O'CONNELL: Well, he doesn't own the land, does he? He doesn't own the land.

NORMAN SMITH: Oh yes. The practice of using the Mexican bracero is that the user associations or the individual users, in almost all instances, contract with a contractor to board, to transport and to supervise the braceros. And --

CHAIRMAN O'CONNELL: Do the farm labor contractors then --

NORMAN SMITH: They own the labor camps.

CHAIRMAN O'CONNELL: They own --

NORMAN SMITH: They own the labor camps.

CHAIRMAN O'CONNELL: Oh, I see.

NORMAN SMITH: And then in an apparent attempt to comply with the public law 78, the domestics are also housed in these same territories. And very frequently, our members who are in these camps, if they're caught talking to anybody, they're threatened with trespass if they ask any of the representatives who are not residents of the camps to come in there, why then we are threatened with trespass. And I want to be quite frank about it that I haven't found the kind of case that I felt that we could carry up in order to test it in the courts. We had one in Lake County but when it became apparent what we were going to do, then the case was dismissed. There is one of our members involved in just that kind of case now in San Joaquin County where he went into a bracero camp and distributed literature to braceros informing them of their rights to select someone to represent them and explaining to them that in trying to raise the wages of the

domestic workers, we would be indirectly affecting the braceros.

It was just such an incident as that, that the so-called Corona case in Imperial County grew out of. A group of our people went to the gates of the camp and asked the braceros to come out and to support us in our demand for an increase of wages in Imperial County. And when they attempted to come out, the son of the camp owner came and tried to lock the gates. And out of that there arose a physical attack on the son of the owner by some of our members. And that brings me back to the real gist of the complaint that we have. Prior to this town, we had had a demonstration at the Diamond Bird Camp in which 13 of our officials and members had been arrested because they were charged with unlawful assemblage and refusal to disperse. These men were arrested and placed under bonds of \$262.50 each. It was a very nominal bond and a case that we intended to test in the courts.

After the affair at the Corona case, there were some 43 people picked up there. In fact anybody that was in the vicinity of the camp and some of them that were driving away, some that had had nothing to do at all with any of the disturbances, some that were not even members of our organization; and they were picked up and were charged with conspiracy to riot, conspiracy to commit arson, conspiracy to kidnap, to unlawfully restrain persons. And that night the - there were two or three of those arrested at the Corona case that had also been arrested in the Danenberg case. But that night, the sheriff's department came to the headquarters of the union and arrested all of the people that they could find that had been involved in the Corona case -- that had been involved in the Danenberg case. These men were immediately charged with almost identical - the same crimes. And the bonds in the Corona case were fixed at \$7,850 each and in the case of the Danenberg people at \$7,350 each.

When we came to trial, on those or when they answered the summons for the trial, those that we had under bond - and we had not been able to secure bonds for all the people - but, those that they had under bonds, the charges were dismissed, the bonds vacated and they immediately re-arrested them on other charges in which the bonds were identical with the ones which had been vacated. So, that it was necessary for us to have new bonds. This dragged out for a long time, and the final outcome of it was that in the Corona case, we entered pleas of guilty in 22 people to a misdemeanor, that of rioting, because the distance it would involve and the fact that most of these men don't have work and we had to keep constantly in touch with them and maintain them; in keeping them in court we found that it was financially a great deal cheaper to enter these pleas and the fines in those cases amounted to \$4,620. And we only did this because it was less of a financial burden and didn't keep all of our people tied up in order to do that. And the most - the most serious charge that could have been raised in that case would have been one of aggravated assault.

We feel that there was definite connivance between the sheriff's department, the district attorney's office, and the grand jury; because the grand jury that indicted these men, had four deputy sheriffs and seven growers who returned the indictment, including the president of one of the struck companies which was involved in the general dispute.

This is a situation that has been investigated for a period of at least 10 years with the present Attorney General and with his predecessor. I know that they have been investigating this for a long, long time. And we feel that because of the political pressure which is put on by the growers of this state, that there has clearly been a miscarriage of justice, particularly in Imperial County. And we feel that we do have plenty of material to substantiate making these kind of statements. And that something should be done to restore some of the civil rights there. Some of the incidents that happened there during the strike was that mounted deputy sheriffs would appear on horses, they would undo their ropes and twirl them around and pitch them on the ground very close to the pickets. And in one instance, two of the pickets were picked up after they had come off of picket duty by deputy sheriffs, taken out to an irrigation canal and thrown in the canal. And then the men that were wearing deputy credentials and deputy badges would shoot into the water. Not shooting at the men, but would shoot into the water near them. And we feel that by deputizing people who are directly involved in these, that we're offering an opportunity for them to exemplify their personal feelings in defiance of the fact that they are law enforcement officers.

I don't know whether the enactment of any different laws - but I think that this committee should be very - made aware of this. And we feel that we would be privileged to be called upon if you want to look into this and if you do want us to furnish any documentary evidence. I'm sorry that because of the press of business, our legal people and of the fact that for time being the funds which I have had to conduct this campaign have been largely exhausted, that I did come very ill prepared. I --

CHAIRMAN O'CONNELL: Did I hear over the radio yesterday that you got a new lease on life?

NORMAN SMITH: Yes. I would rather not emphasize that to any extent, but we are as I have felt all along, that when the convention went into session, that we would be. And I certainly want to thank the committee for giving me an opportunity to come and to give you a rather brief resume of the things that we have had to deal with. And I know that this is a controversial subject. I am not above violating the law, if it's determined with the idea of testing it. I have had to do that in a good many instances in the past, particularly in the laws pertaining to hand billing because when you



find one of these laws on the statutes, the only way I know to get it tested without going through a four or five year campaign of getting the law repealed, that the best way to do it is to violate the law and to let the people know that you are violating and you are willing to take the consequences if you can't overthrow it in the courts. And I want to thank you for the opportunity to appear.

CHAIRMAN O'CONNELL: Well, Mr. Francis, first, and then Mr. Kilpatrick.

ASSEMBLYMAN FRANCIS: Mr. Smith, as I recall, wasn't it in Imperial County where allegedly two and a half million dollars worth of damage was caused by strikers or by the people associated with the strike?

NORMAN SMITH: Two and a half million dollars worth of damage? There may have been a two and a half million dollar loss in the crops, but it certainly was not damage.

ASSEMBLYMAN FRANCIS: Well, what I mean is there was that amount of loss. In legal terms we consider, losses, damages -- perhaps I didn't phrase that properly in your meaning.

NORMAN SMITH: Well, we certainly are not going to assume the responsibility for any such loss because it was the bull-headedness of the growers. Because we asked them weeks before we called this strike, to sit down and to talk with us. But because of the fact that they had maintained a wage of 70 cents an hour for ten years, and that they had driven all of the domestics out of that country, and so that businesses are leaving that country. And that constantly, the holdings of growers have been growing and growing and that all the little farmers have been run out of there. We don't assume any of the responsibility for having caused a loss.

ASSEMBLYMAN FRANCIS: Well, weren't there other damages that were caused, I mean, such as --

NORMAN SMITH: No, there were no other damages. The only thing that was involved in that case at all was the case of what I think is simple assault and could not have been classified as anything greater than aggravated assault.

ASSEMBLYMAN FRANCIS: Well, I can't recall all of the details because it was some time ago, but as you well know, it received state-wide publicity and perhaps, even national. And I remember it was a very critical situation down there and I just wonder if that's the reason why they had so many deputies. Was it this particular season where they had 500 deputies or is this something that is common and has been true throughout the past history of Imperial County?

NORMAN SMITH: Well, they had 500 deputies this past season. And of course, this is the first time I have been in there, but the history of Imperial County is very replete with exactly this same thing.

ASSEMBLYMAN FRANCIS: Do you know how many deputies they had, say two or three years ago, during the seasons?

NORMAN SMITH: No.

ASSEMBLYMAN FRANCIS: You mentioned that this has been investigated by the Attorney General for the last ten years. I assume that you mean both Attorney Generals, our present Governor and also, now Attorney General Mosk. Have they reached any conclusions in their investigations or have taken any action?

NORMAN SMITH: No, they haven't.

ASSEMBLYMAN FRANCIS: They haven't made any findings at all. I see. Thank you.

NORMAN SMITH: At least they haven't been made public.

CHAIRMAN O'CONNELL: Mr. Kilpatrick.

ASSEMBLYMAN KILPATRICK: Well, Mr. Smith, I am just wondering, since this is a matter that would be taken before the Industrial Committee, has it been presented - has your case been presented to the Industrial... What's the committee?

CHAIRMAN O'CONNELL: Relations.

NORMAN SMITH: No, it hasn't.

ASSEMBLYMAN KILPATRICK: Industrial Relations.

NORMAN SMITH: It hasn't.

ASSEMBLYMAN KILPATRICK: Do you know of any meeting that has been scheduled to hear your presentation?

NORMAN SMITH: Well, I am conferring with some of the people on that committee, yes.

ASSEMBLYMAN KILPATRICK: Are you getting a favorable interest?

NORMAN SMITH: Well, I think they are going to ...

CHAIRMAN O'CONNELL: Let me ask, Mr. Smith - I have heard that, at least prior to last September, that the old vagrancy statute in California was used to - in some counties of the state for various purposes that were connected with the farm worker problem. I have heard for one thing that the vagrancy statute was used to create the labor shortage which would qualify or make it possible for PL 78 to be used to - braceros to be brought in. Do you know anything about that?

NORMAN SMITH: Well, it is a very difficult thing to prove and anything that I could say on it would largely be hearsay. I have gone into court and defended some fellows who were charged with vagrancy and have been able to get some restrictions or some of the restrictions that are applied to these people. \*\*\* And I understand, I think almost as well as anyone, the terrific problem that the police have with the so-called skid row sections of our cities. I would imagine that I have spent almost as much time among them as the average policeman. And there has been in the valley for a good many years, a tendency to keep the people who - or a great segment of the agriculture workers constantly on the move because if there is no work in the town when they arrive, they are told by the police and told by the courts to move on. They will give them a jail sentence, and then if they will promise to move out of town, they will move out. And --

CHAIRMAN O'CONNELL: Those people in that situation, were they charged with vagrancy?

NORMAN SMITH: Ordinarily they are, yes. And of course a good many of them are picked up as drunks and there is no question that in most of those cases, they are drunks. But, I have known, from my own personal knowledge, of instances where men were working one day and they came in and were told they were no longer needed because they were being replaced by braceros. Two days later, they would be in jail charged with vagrancy. We had a defense of some of these cases. And since that time, we have had pretty fair relations with the police department of Stockton. This just occurred in Stockton. I have known of instances, but I can't come into court with enough proof that that has happened, in Salinas where the domestic workers have been run out of town and then, within a day or two, the contractors and the growers would be into the employment department asking to be given braceros, alleging that they couldn't get domestic workers to do the work.

CHAIRMAN O'CONNELL: Do you suspect collusion there between the growers and the police departments or the sheriff's office?

NORMAN SMITH: Well, it would be pretty hard to prove collusion. I suspect that the police departments in a good many



instances being harrassed with a small staff, of having a bigger problem than they know what to do with. They have just sort of developed into this. They refer to it as the revolving door policy. They run the people out of Bakersfield, then they come up to Modesto or Stockton. They are asked to move on there. Then they come to Sacramento. And we have a little less of it in Sacramento than we do in other places. Go to Salinas, they just keep them on the move all the time. And I - it would be pretty hard to prove that it was collusion. We frequently say that, but for you to find actual proof of it -- and if I ever do find it, of course, I will certainly be trying to present it to everybody that will listen to it.

CHAIRMAN O'CONNELL: How about this situation. Has this ever happened that you found county jail prisoners being used to break strikes in - that is strikes that you have --

NORMAN SMITH: Well, in our case since I have been director, we have found no cases in which they were being used to break strikes. We did- in Contra Costa County, of course, has the practice there of the sheriff's department leasing out the prisoners to growers which they have now corrected. They will not do that until the Department of Employment has certified that there is a shortage. But they would have 100 to 150 people there that have never been actually used in a strike situation. But they kept the - they kept the situation in such a turmoil that there would have been little point in trying to have a strike, because they would use them until there would be such a surplus of hungry people that there would be little point in trying to have a strike. But that has been corrected to the extent that they will confer and ascertain the fact that there are no available domestic people.

CHAIRMAN O'CONNELL: Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Mr. Smith, how many people did the union bring into this Imperial County situation? There was some discussion, some rumors that several thousand people were brought in by the agricultural union into this area at the time of the trouble of the lettuce strike down in the area there.

NORMAN SMITH: Well, there were a great many agricultural workers that went into that area. And we didn't bring any of them there except to the extent that we set up the soup kitchen in which they were fed. And when our staff would be going there, if we saw someone hitchhiking along the road, we afforded them transportation to get into the valley. So, we feel that they are more entitled to these jobs than the people that are brought in from some other country.

ASSEMBLYMAN WOLFRUM: In a sense then, you did help to create a problem as far as the sheriff's office in Imperial County was concerned?

NORMAN SMITH: Well, I don't think we created any problem. I think that problem was there because the sheriff's department in that county had been used to run the domestic people out. And the imposition of a wage at which people could not make a living had been used until all of the domestic people who resided in the Imperial Valley had been driven out of there, including the people who had helped to make the agricultural industry what it is.

ASSEMBLYMAN WOLFRUM: You will concede, though, that Imperial County, as I understand at least, is an agricultural county. They have very little industry except agriculture. Isn't that correct? So, if you were to attempt to find a number of people to assist the sheriff as reserve deputies, it would be pretty difficult to find someone who is not connected, in some way, with agriculture in this particular area.

NORMAN SMITH: Well, I know that that is right.

ASSEMBLYMAN WOLFRUM: Similarly, with your grand jury or any other law abiding group or law making group or law investigative group, it would be extremely difficult to find people in the county of that kind that did not have some tie-in with the agricultural operations.

NORMAN SMITH: That is correct.

ASSEMBLYMAN WOLFRUM: Do you agree to this?

NORMAN SMITH: And it is the same thing that we had in the development of the West when the cattle men - when the cattle men were entirely the law. And as far as the development of the country was concerned then, when they found the sod buster, you were very familiar with what happened to him. And we have exactly the same situation in Imperial County. They don't want any little people there. These big operators that completely control the county want the status quo to remain, that they can bring in an army of people and keep them penned up in a fence within a wire pen and use them when they need them, to produce the crops that they have.

ASSEMBLYMAN WOLFRUM: Well, I think we all agree that there is a social problem involved in this particular situation.

NORMAN SMITH: It is not a social problem. It is an economic-social --

ASSEMBLYMAN WOLFRUM: Social, economic -- yes. You stated that you had some lists of some kind of the people who were sworn in? Were these people sworn in prior to the strike or during the strike or --

NORMAN SMITH: A good many of them were sworn in just after the strike began.

ASSEMBLYMAN WOLFRUM: At the time that this influx of people started coming in?

NORMAN SMITH: I don't feel that this was a group of people coming in, because there are not enough people in Imperial County to do the work there at the peak of the harvest. And I feel that native born Americans or people who have resided in America and maintain their families here are more entitled to it than to go outside the country and bring somebody in. Somebody has to --

ASSEMBLYMAN WOLFRUM: I don't feel this committee is in a position to decide the bracero question. Quite frankly, whether we agree or disagree with your premise as to the braceros, in my opinion is not the function of this committee to make the decision in that area.

NORMAN SMITH: No, but I think --

ASSEMBLYMAN WOLFRUM: The area we are interested in, I think, here is the use of the law, either against you people or for you people, and any abuses of police powers in this area. And this is I think the concern of the committee.

ASSEMBLYMAN KNOX: (temporarily Acting Chairman). Well, I just - Mr. Wolfrum, as I understand your question as you want to know about deputies who were sworn in for the purpose of this particular dispute. Is that correct?

ASSEMBLYMAN WOLFRUM: All I am interested in is, he made an allegation - or statement here - that some 500, I believe it was, were sworn in. And if he has the list, I think it should be --

NORMAN SMITH: Well, I would like to - I would like to leave this --

ASSEMBLYMAN KNOX: Sergeant, would you pick that up. And do you want that returned to you, Mr. Smith?

NORMAN SMITH: Yes, I would.

ASSEMBLYMAN KNOX: All right. Thank you. Are you through, Mr. Wolfrum? Well, thank you very much, Mr. Smith. We appreciate your time in coming here. And I think your testimony has been of considerable value to us.

NORMAN SMITH: Thank you.



ASSEMBLYMAN KNOX: Thank you for coming. Our next witness this morning is Mr. J. F. Coakley. Mr. Coakley? Won't you sit down, sir? And will you please identify yourself for the record?

J. F. Coakley  
District Attorney  
County of Alameda

ASSEMBLYMAN KNOX: Thank you.

J. F. COAKLEY: I am also, and have been for many years, Chairman of the Law and Legislative Committee of the Peace Officers Association of California and of the District Attorneys Association of California. Now, I was asked by Mr. O'Connell, in a letter, to appear here. And so I am here to answer any questions that you may see fit to ask.

ASSEMBLYMAN KNOX: Well, Mr. Coakley, perhaps first you might like to comment on the general subject matter of this hearing which are police procedures and how they work in coordination with the code as it presently exists. Also what comments you might have on the operation of the Penal Code 647, as it was amended in the last session.

J. F. COAKLEY: Well, the letter which I received from Mr. O'Connell said that this subject matter of this hearing would be police practices and --

ASSEMBLYMAN KNOX: Right.

J. F. COAKLEY: -- and that the law of arrest --

ASSEMBLYMAN KNOX: Right.

J. F. COAKLEY: The broad subject... One hardly knows where to begin, but I might say that, at the outset, my views with respect to the law of arrest are contained in an issue of the "Northwestern University Law Review" in volume 52 on page 2, which came out in March of 1957. This issue of the law review contained a symposium of articles for and against - that is, stating the views of six different persons supposed to be experts, I guess, on the subject of arrest and interrogation - the subject of interrogation and police practices. This symposium came out of the - out of a talk I made at the American Bar Association in Dallas in 1956 at the annual convention of the American Bar Association. The subject which I was asked to talk upon at that convention, and which was assigned to the panel of which I was a member, was, "Are the Courts Handcuffing the Police?" And as a result of the talks made there, the editor and the editorial staff of the "Northwestern University Law Review" decided to have this symposium, and we all contributed at the request of the editor. Now, this is my article and most of

the other articles here are quite fully annotated with citations of authority, cases --

ASSEMBLYMAN KNOX: Perhaps, I could suggest this, Mr. Coakley, that --

J. F. COAKLEY: I would like to --

ASSEMBLYMAN KNOX: Can you leave that with us?

J. F. COAKLEY: I --

ASSEMBLYMAN KNOX: Do you have a copy?

J. F. COAKLEY: We have a copy in our files. This is the only copy I have, that is why I refer to the citation --

ASSEMBLYMAN KNOX: We will note the citation in the record and we do have in the committee files a copy of your article. Could I suggest this, sir? Perhaps as an approach -- in what general ways do --

J. F. COAKLEY: I think it would be helpful to the committee, Mr. Knox, it contains - and as I say there are three professors here in this... There are Professor Paulsen, Professor Foote and Professor Inbau. Inbau is the professor of criminal law at Northwestern University Law School, and he has written a number of books on police practices. Lie detector is one of them and he is also the author of a case book, which - a new case book, a very fine case book, which is now being used in some of the law schools. And then there is an article in there by a judge - the celebrated Judge Liebowitz, who was for many years one of the leading defense criminal attorneys in the United States, is now a judge in Brooklyn in Kings County in New York. Incidentally, talking about Judge Liebowitz, I heard him on a TV program recently and they were discussing this very thing, criminal law, procedures. He made this statement, that the judge - the trial judge - does not know from day to day or week to week what the law is going to be, that the doctrine of stare decisis has been so diluted by the court decisions that the judges find difficulty in getting guidance from precedent, the cases now. And then when a judge of Judge Liebowitz's stature and tremendous experience in trial work makes a statement like that, one wonders how the policeman walking his beat in the middle of the night when confronted suddenly with a situation can be expected to guess right on whether the evidence is sufficient to justify arrest.

ASSEMBLYMAN KNOX: Would you feel that the present law of arrest in California handcuffs the police in any way?

J. F. COAKLEY: Yes, it does. In certain respects --

ASSEMBLYMAN KNOX: In what ways?

J. F. COAKLEY: Well, now for instance in misdemeanor cases as we know under the law, it is illegal for a policeman to make an arrest if the offense is not committed in his presence. Well, and yet - yet he is the citizen's - the law abiding citizens of the community expect him to make an arrest in certain cases. You take the common offense of driving while drunk, most of the time the policeman does not actually see the crime being committed in his presence. There is an accident, the car runs into a parked car or something and some citizen calls the police and he come there. He doesn't actually see the offense being committed in his presence because the driving of the automobile is an element of the offense. Yet, he is expected by the citizen or citizens to make an arrest. The man may be lying on the lawn, vomiting or something else and the policeman doesn't see him driving the automobile. So, if the policeman takes him in as he is expected to do, and as he does, he is expected - he is making, strictly speaking, technically - an illegal arrest. And if any and ...

ASSEMBLYMAN KNOX: You mean if the arrest would not stand up on any other basis? Whether he is --

J. F. COAKLEY: Yes.

ASSEMBLYMAN KNOX: -- drunk in a public place or --

J. F. COAKLEY: Yes, you could have - you could possibly justify it if there was an ordinance of being drunk in a public place. The - but it so often happens that the man sometimes is not drunk enough to support an arrest under such a circumstance, but he is sufficiently under the influence of liquor to be guilty of the offense of driving while under the influence of liquor. The elements of the two are different.

ASSEMBLYMAN KNOX: What change would you suggest in the law of arrest for misdemeanor that would solve this problem?

J. F. COAKLEY: Well, I would suggest the deletion of the phrase "committed in his presence."

ASSEMBLYMAN KNOX: In other words, the policeman could arrest anybody at any reasonable time?

J. F. COAKLEY: On reasonable, probable cause. Just as in a felony.



ASSEMBLYMAN KNOX: Just as in a felony for a misdemeanor?

J. F. COAKLEY: Yes.

ASSEMBLYMAN KNOX: That is the suggestion? Do you anticipate there would be any problems with this in other fields than the somewhat dramatic example you have given us?

J. F. COAKLEY: What is that?

ASSEMBLYMAN KNOX: Do you feel that this would create problems in other fields beyond just the drunk problem?

J. F. COAKLEY: Well, you think that -- possibly I have not exhausted my thinking on the subject, but certainly in the case of petty theft, a crime of petty theft, a frequently - that is a misdemeanor and frequently the policeman does not see the crime committed in his presence. The citizen - the victim - calls the police and says somebody stole something and says - the shoplifting cases are common. There is a lot of shoplifting that goes on. And so the proprietor of the store calls a policeman and he describes the person who ran out of the store and the police probably an hour or so later may find him someplace, walking along. The description has been detailed enough by clothes, and so forth. The police pick him up and find the loot on him. Well, now the question which arises in my mind, is that an illegal arrest? He did not see the offense being committed in his presence. By the way, too, the aftermath of that. There are other consequences if he makes the search and finds the loot, is the search an illegal search and seizure? And which under the exclusion rule, which is now in effect in this state as a result of the Cahan decision and which is also now in effect in every state in the union under the case of Ohio versus Mapp which was decided in June of this year by the United States Supreme Court. Clearly there is the evidence of the finding of the loot by the police, is that to be excluded because the arrest was illegal?

ASSEMBLYMAN KNOX: Well, let me say --

J. F. COAKLEY: \*\*\*

ASSEMBLYMAN KNOX: Let me pose this situation to you which we heard from the witnesses yesterday to see what you might think a proper interpretation would be of this. A man who was known to the arresting officer to have a prior record for vagrancy is walking down the street. The officer has no other indication whatsoever that the man has committed or is about to commit any crime. The man is stopped and arrested and searched by the officer, and he finds some contraband on the man. He has no basis, no probable cause, no basis to stop and search the man at all. Do you feel the law should allow that sort of arrest?

J. F. COAKLEY: Well, the law does not allow that kind of arrest and that kind of arrest under the present law would be illegal and it would be - and the evidence would be inadmissible, it would be excluded.

ASSEMBLYMAN KNOX: Well, of course, we are interested in -- Do you think the law should tolerate that kind of arrest?

J. F. COAKLEY: Well, where there is absolutely no probable cause whatsoever, no. It should not tolerate it.

ASSEMBLYMAN KNOX: And the evidence should be excluded?

J. F. COAKLEY: It should be excluded. And I do not think the police are making those kinds of arrests, either. In fact --

ASSEMBLYMAN KNOX: Well, I am not - apparently, one was made. But, I am just giving you --

J. F. COAKLEY: I might say in that respect, Mr. Knox, I think a lot of damage has been done - harm has been done to law enforcement by an exaggeration of alleged misconduct on the part of law enforcement officers. And because of the isolated misconduct - or mistakes of a few. Anyone would with common sense know we should not condemn a whole organization, a whole vocation, a whole profession because of the misconduct - the isolated misconduct - of a relatively few.

ASSEMBLYMAN KNOX: I don't want --

J. F. COAKLEY: There may be bad ministers, there may be a few bad clergymen, there may be a few bad men in the army or the navy or in government, but you - we don't condemn the whole field of activity because of that. And we don't legislate on that basis, or shouldn't at least.

ASSEMBLYMAN KNOX: But, you agree, I am sure, Mr. Coakley, that the law of arrests, let us say, should certainly be - the reason we have any law of arrest at all is for the protection of the reasonable rights of the private citizen.

J. F. COAKLEY: That is right, of course.

ASSEMBLYMAN KNOX: And you agree that we should have those protections, and I did not mean to imply any condemnation of police in general, of course. I was simply citing an example we heard from one of the witnesses yesterday.

J. F. COAKLEY: We know that a certain - that the followers of a certain subversive ideology in this country have for years, one of the main prongs of their propaganda has been aimed at the

police, at law enforcement. And they have accused, wherever they get a chance. And even when they don't -- when it isn't merited by the facts, they accuse the police and the courts, sometimes, and the prosecution of misconduct when it isn't there. We had a good example of that here about a little over a year ago, and before this very committee when a known Communist, two of them, lawyers, were permitted to use this committee as a sounding board for their propaganda. You remember that, Mr. O'Connell, and I was attacked by those men.

CHAIRMAN O'CONNELL: I remember there was some give and take.

J. F. COAKLEY: Huh?

CHAIRMAN O'CONNELL: I remember there was some give and take.

J. F. COAKLEY: Uh.

ASSEMBLYMAN KNOX: Could I ask, Mr. Coakley --

J. F. COAKLEY: Now, as a result of this propaganda and as a result of this attack upon law enforcement generally, I think, as I say, the public has been misled to a great extent and a great deal of harm has been done. And I hold, incidentally, in my hand here an article which is in one of the papers in San Francisco, just Monday, entitled "Problems of the - San Francisco's Thin Blue Line." The problems of police which points out the - what the police are up against these days from people who resist arrest and who attack policemen. There is a great deal of violence going on against policemen. Badges are being torn off. Their coats are being torn. They are being attacked. And I would like to - this is the San Francisco Examiner for December 11, 1961. This is an article which gives specifically, case and chapter and verse - the number of - the number of the alarming increase of resisting arrest cases since 1955 when the Cahan decision was decided. The number of officers who have been forced - who have been attacked and have been injured is growing by leaps and bounds. The department's casualty list contains entry after entry of officers being kicked in the groin, struck in the face, wrestled to the ground, and so on. I would like to put that - my remarks in that respect in the record.

There is another article which I would like to call to the attention of the committee too in the November 25 issue, 1961 issue of America. It is entitled "The Policeman and His Public" which says today walking the beat in many of the cities' police precincts can only safely be done in pairs. And I see Police Chief Cahill of San Francisco is now talking about putting two men in a patrol car. And that is going to be - that is going to add to the expense of the taxpayer, the law abiding citizen who constitutes about 95% of the population. He has to pay the bill for these things. Law enforcement --



CHAIRMAN O'CONNELL: Hasn't San Francisco had two man patrol cars for years?

J. F. COAKLEY: I - according to Chief Cahill in here, he says he is talking of expanding that, of having more two man patrol cars. In Oakland, we had one man patrol cars except in certain areas in ... Now, if we are going to have to increase -- that calls for an increase in the number of policemen and policemen cost money. Now, this article here, goes on to say that there has been talk even of equipping the patrolmen with walkie-talkies so help can be summoned whenever it becomes necessary. By FBI count, 48 policemen were killed last year while performing their work in cities across the country. One less than in 1959. The assaults on police officers last year added up to 9,621. And the losses of police work time resulting from - in New York alone - resulting from this summer's assaults were equivalent to almost 4,000 work days. Over the past 10 years, in this one city alone injuries to policemen by assaults have risen 150 per cent. Now, this is quite an enlightening article. So, this attitude of certain people of the criminal element towards police and law enforcement, this lack of respect for authority, for duly constituted authority is a real problem these days in law enforcement and something with which to conjure, something which we have got to try to do something about if we can by legislation. And this - as this article says - the sad fact is that in many cases, the policemen just stop trying.

I have just recently interviewed a policeman who was until recently a member of the Los Angeles Police Department, a patrolman. While he was a member of the police department, he studied law at the Southwestern University Law School on his off hours and became a lawyer. Now, he was injured - he was injured in his work in the police in an automobile accident. Another car ran into his car. He had a broken back. As a result of which he had to be retired for disability, but he could still practice law, so he came to me for work. And I had a long conversation with him about his work. He had been a patrolman in Los Angeles for 14 or 15 years. And I asked him about how some of these decisions which we have had in recent years, as a result of the Cahan case and others, - by the way I have had a young man in my office who is - came to me from the Boalt Hall, a member of the law review there, and who will be sworn in as a member of the bar in January. He just took the ex... While waiting, I employed him as a law clerk, a student clerk and had him completely review all of the search and seizure cases in California since Cahan. And now there are some 500 cases, approximately 500 cases, on search and seizure alone. So, that is costing the taxpayer more money, too. We have had to add to the district court, to our appellate district courts of appeals, and to the number of judges we have because the subject is rising - comes up again and again.

Now, as I say this officer said, to get back to the point that I make, that some of them are not just trying like they used to, because he said there was a time before Cahan - before the Cahan case - when walking our beat at night we would see a man, we know, we recognized him as a narcotic peddler or a narcotic addict. And we would stop him and search him. Perhaps, when he saw us, he went - he started running the other way or something. He gave us some reason for doing it. And we would find the narcotics, sometimes find a gun. He says we are not doing that anymore. We are sick and tired of being sued for damages. In Los Angeles alone when I wrote this article in the "Northwestern Law Review", I checked it. The total amount of claims in cases filed in the Superior Court of Los Angeles County against the Los Angeles Police Department amounted to something like 12 million. And, of course, the amount of money recovered was practically nil. But, nevertheless, it is a harrassment which the individual officer, no one wants to go up against a law suit. And that has become a problem.

So, the person who is suffering, really, is the law abiding citizen and he is the one who has to pay the bill. Now, as a result of some of these decisions, and laws - the cost of law enforcement is increasing. Now, the policeman who does not - who decides he cannot stop the addict or the peddler, a known peddler, or possibly he has some confidential information from a reliable informant that a peddler is going to make a deal on narcotics at a certain time. But he does not want to, as we say, "burn up" that informant, he does not want to disclose the identity of that informant because good informants are hard to find. And they cost money. And the rookie policeman that they hire and use as an informant is -- pretty soon his usefulness is worn out when he has to testify and his identity is disclosed. So, the police are being handcuffed, to a certain extent, and restricted in their operations. And if they - to hold the line and try to combat the evils of narcotics and some of these other things, they have to hire more informants and, as I say, good ones cost money. And then the taxpayer pays the bill. The law abiding citizen pays the bill.

ASSEMBLYMAN KNOX: I just want to compare a couple of examples you have given us. Could I have a light? I want to compare a couple of examples you have given us, Mr. Coakley. I gave you the example of the fellow walking down the street who is a known vagrant, but there is no probable cause to believe that he has committed other crimes. And you say that -- you agree that under the present law of arrest or any - under any law of arrest that you yourself would approve, he should not be arrested and searched. Now, how about --

J. F. COAKLEY: If there is no probable cause.

ASSEMBLYMAN KNOX: No, no probable cause, whatsoever. All - well, the only probable cause is that in the past the man has a record

for vagrancy and the officer knows it, if that is a cause. And then you say that, I gathered you said with approval, that a police practice had been of a known narcotics peddler that he would simply be stopped and searched on the spot, and they are not doing that anymore. Do you think - how do you compare the two - the two points of view? We are talking about two different types --

J. F. COAKLEY: Well \*\*\*

ASSEMBLYMAN KNOX: \*\*\* The legal question is still the same, isn't it?

J. F. COAKLEY: As I say, I think if you will go back to the record, that I said that when the officer walking the beat sees a man he knows as a peddler or an addict, and he in some circumstances frequently and he generally does, even the time I am talking about, the man would turn the other way or he might look away or he would make some move of some kind which would - gave the officer the indication that he might have some narcotics on him. And, but the question whether that would constitute legal probable cause in the courts is very doubtful and \*\*\* of the confusion which has grown up as a result of these 500 cases we have had since Cahan. Some officers I dare say, and according to this officer in particular who I was interviewing, say well, we just don't make arrests anymore or we don't even stop and search anymore in cases where we would have before. And the result is that the crime is on the increase and particularly narcotics. And that breeds other crimes. We know that narcotic traffic breeds a lot of other crimes - shoplifting, robbery, and sometimes even murder.

ASSEMBLYMAN KNOX: Well, Mr. Coakley, you - I am sure don't approve of mistreatment of a --

J. F. COAKLEY: No, I don't approve.

ASSEMBLYMAN KNOX: -- of a prisoner by a policeman. Do you know of any mistreatment of prisoners that has been going on by police departments either in your area or in any other area, and also I wondered if you have had any prosecutions for police brutality of any type?

J. F. COAKLEY: Well, I haven't heard of any mistreatment of any - of any citizen by the police for a long time. I have had a few cases in my time in the district attorney's office. I prosecuted wherever the facts justified. We have taken appropriate action. I remember one time I prosecuted two policemen for - I got the grand jury to indict - or presented the evidence to the grand jury for two policemen who assaulted a man in jail. He came in there during the night with DT's and he went berserk in the jail. And they chased him and they jumped him and they beat him and he



died as a result of the beating. We presented this to the grand jury. The grand jury indicted. I personally prosecuted and both officers went to San Quentin. I had other cases where I have ... but not very many. There are very few. I will say that. But wherever they come up, the court record of Alameda County will show the police have been prosecuted. In a number of offenses involved the number of police who do these things is very, very small. And I haven't heard of any for a long time. Just the other day, I was talking to the public defender of our county, a man who is Martin Pulich who has been in that office for about 15 years. I said, "Martin, in all your time, your 15 years in the public defender's office, how many cases can you tell me where the defendant - where your client - the public defender represents most of the criminals in criminal cases, how many cases can you tell me when there was any kind of brutality or mistreatment by the police of prisoners." He stopped the car. He said, "Well, about five." And then he - and then I said, "what fine?" He didn't remember the names. "What were the circumstances?" And he could only give me the circumstances in three of them and they were relatively insignificant.

ASSEMBLYMAN KNOX: Let me ask you about the --

J. F. COAKLEY: I say these things are exaggerated. And the public is being misled about this and the smear attack on law enforcement.

ASSEMBLYMAN KNOX: I just want to raise one other subject that some of the other witnesses have commented on. That is the possible use of the citation procedure for other than vehicular offenses.

J. F. COAKLEY: I was coming to that. I have a note here. I discussed that in the "Northwestern University Law Review." Now, I think that the citation procedure is a good thing. We have used it in Alameda County for years in the District Attorney's office. We have a procedure there known as a citation and a citation hearing. \*\*\* It has no support in the law. What it amounts to is a letter. Somebody comes and makes a complaint to us about some other person doing something. And, or the police come to us with a - certain kinds of cases. Or some department of city government or county government, say a violation of the building code, a violation of an assembling ordinance, a violation of the electrical code, the plumbing code. The labor commissioner comes to us with a complaint of some violation of the labor contract. The employer is not observing the - some of the fringe benefits - abiding by some of the fringe benefit provisions of a labor contract, say with respect to vacations, or pay or paying of money into a welfare fund for insurance. Wherever the facts indicate, we use a citation proceeding. I have been doing it - by - for years. That is, we send a letter to the accused asking him to come into the office at a certain time and at which time we have

the accuser and the - present - and the accused brings his attorney if he sees fit to do so. He does not have to come in if he does not want to. There is no authority; there is no sanction in the law to make him come in. And sometimes they do not come in. But when he does come in, we have the accused - the accuser - make his statement and then we listen to what the accused has to say. We get both sides of the story. And frequently - frequently - that is the end of the case. Both people go away satisfied, if it is a violation which can be corrected, the - the man who is accused says I won't do it any-more, I will correct the situation and that is that. Now --

ASSEMBLYMAN KNOX: Mr. Coakley, if I could interrupt you. The citation procedure we were particularly referring to is \*\*\* that of an officer who has a - not for traffic. We have that with us now, but let's say an officer sees a certain type of crime being committed where he doesn't feel it is in the public interest or public safety requires the immediate incarceration of the individual, where he carries a book of tickets, in effect, and asks the fellow to sign a promise to appear. Do you think that that should be a broadened practice?

J. F. COAKLEY: I think it should be in the certain types of cases. Now, we can't use it in robbery cases, a murder case, a narcotics case or cases like that where if you don't make the arrest right now, why then he gets away. You don't - you spend a lot of money trying to find him. But in certain kinds of cases I do think it is a good procedure. We have it in the law now. It is in the law now. \*\*\* by action of a city council or county board of supervisors or by the legislative body of the county. They can adopt the citation procedure, as I understand it, by - and specify the types of cases in which it can be used. I think that's a very good thing. As I say in here and we're going to have to do it more and more because of the fact that jail construction is very expensive, as we know. And by using a citation, by extending the citation procedure which you mentioned, we are able to get along with less jail space. Now, I - there is another procedure, Mr. Knox, which I mentioned in this article. That is the summons procedure which is in the federal law whereby a man instead of being arrested after he is indicted or charged, he can receive a - summons can be served on him and he appears at the time of arraignment pursuant to the summons. And that is used in some cases in England and it's been found to be satisfactory.

ASSEMBLYMAN KNOX: Mr. O'Connell.

CHAIRMAN O'CONNELL: I am wondering, we have Section 853.6 of the Penal Code which applies to this citation - persons arrested for offenses declared by state law to be misdemeanors. This is the section which would permit the arresting officer in a given case, according to his own discretion, the right to cite a person to

appear in court on a given day, rather than to take him into custody. And it's my understanding that this section is used very seldom in any jurisdiction in this state. I'm wondering what we might do to encourage its more liberal use, so as to prevent - to alleviate the congestion in our jails in almost every city and county in the state. We have the complaints of the jails being too crowded and moreover, in many cases, it appears to me, the offense is not such that the public safety would require immediate incarceration of the person. One of the - one thing that occurred to me is an amendment to 853.6 to make it mandatory that in a certain type of case that the citation be used rather than a formal arrest. And I am wondering what your reaction to that would be.

J. F. COAKLEY: Well, I will say again that I certainly approve of the citation procedure being used in any case which lends itself to that. Now, for instance, say, here take a man who lives in the community. He is employed in the community. His family - he has a family in the community and his children are going to school. In certain kinds of cases, I see no reason for arresting him until a complaint is issued and a warrant issued by the court. I think we should try to make the investigation as much complete as much as possible - as much of the investigation as possible before the arrest is actually made. And the citation procedure in a case like that is certainly would be proper. And we are trying to encourage as much as we can the men in my - among my staff who do the prosecution. I keep telling them, I say "Tell the police, try to educate the police to the use of a citation procedure or to the practice of making as much of the investigation as possible before they make any arrests. Now, that's the practice in the federal - with the federal agencies - the FBI, the Treasury Department, and these other departments - enforcement departments of the Federal Government. For the most part make their investigation before any arrest is made. And they get the complaint and the arrest is made on a warrant. And that is a good thing, I think. And it would save the taxpayer some money and with respect to jail personnel and jail space. Now, anything the Legislature could do to encourage that, I would certainly concur in. I would try to help out as we do, as you know I have for years helped the Legislature in legal matters, in advice, in research. Now, whether to make it mandatory, I don't know, but one thing you might do would be to delete that provision that the city council or \*\*\* a local legislative body --

CHAIRMAN O'CONNELL: Well, I don't believe that applies in connection with 853.6. I think that applies only to the - those offenses which are made misdemeanors under local ordinance. There's another chapter of the code which deals with those offenses. This deals with offenses which are made misdemeanors under the state law - the Penal Code or perhaps some other code.



J. F. COAKLEY: There is a great deal of continuing education going on in law enforcement among police and prosecutors and --

CHAIRMAN O'CONNELL: Apparently --

J. F. COAKLEY: -- we're trying to achieve these things, Mr. O'Connell.

CHAIRMAN O'CONNELL: Apparently, one of the problems is that the officer does not carry - or like to carry around with him - a book of tickets, you know. A traffic officer, obviously, does carry around a pad of citations - forms. Possibly we could do this. We could have one form of citation which would apply to both traffic and other kinds of offenses. So it would be necessary to carry one book around.

J. F. COAKLEY: As you know, we have the uniform citation form which the American Bar Association traffic --

CHAIRMAN O'CONNELL: Well, they're made up in such a way that it's worthwhile only to vehicle code --

J. F. COAKLEY: I think any effort to extend the - and increase the use of the citation procedure would be good. It would be good for law enforcement and the administration of justice.

CHAIRMAN O'CONNELL: This is a - really an OR- a substitute for OR.

J. F. COAKLEY: Yes.

CHAIRMAN O'CONNELL: As a practical matter under our system today, nobody is released OR until he appears before the magistrate.

J. F. COAKLEY: Yes, that's right.

CHAIRMAN O'CONNELL: And then only rarely.

J. F. COAKLEY: That's right. That's right.

CHAIRMAN O'CONNELL: But, this kind of a system would permit more people to be released on a promise to appear at a certain date.

J. F. COAKLEY: I might say I never had any desire to see the bail bond brokers prosper so much.

CHAIRMAN O'CONNELL: Well, this would affect -- the more you use the citation system, the less need \*\*\* to the bail bond broker.

ASSEMBLYMAN KNOX: Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Mr. Coakley, regarding jail space, would you say that the problem is with the sentenced prisoner or with the unsentenced prisoner, as far as jail space is concerned?

J. F. COAKLEY: Well, of course, we know when he's arrested, he's put in jail until he is - until he gets out on bail, except in certain cases like murder and kidnapping and 209 of the Penal Code and some of the other death penalty offenses. But, \*\*\* before he's sentenced and after he's sentenced. While he's awaiting sentence, he's in jail. But particularly in the local level, there are so many cases now even in felony cases where the court gives probation. And as a condition of probation, the man is sent to the county jail. Now, we have been fortunate in Alameda County in having a rehabilitation center at the old Naval Receiving Station out at Santa Rita. That was a big, a big station. And we were, right after World War II, we were able to lease from the federal government that property and we still have it. And we just use the buildings there and they have one of the finest rehabilitation centers in the country. It is rated by the federal government, as you know the present government can send prisoners to local county jails for rehabilitation facilities. And they rated our rehabilitation center there, our county jail as one of the highest in the country. And there is a good move. The men work in the fields, they produce vegetables and fruit and cattle and pigs and so forth. And the operation is self-sustaining and it helps the - to - and it also provides food for the hospitals, for the county, for the institutions. Now, I think that's wise; it's a good thing. Anything that the Legislature could do to - along those lines would be a good thing.

It's a problem. If we didn't have that rehabilitation center in Alameda County I don't know what we would do for jails. The cities - there's only one city that has a jail. The others hardly have holding facilities, where they hold them for a few days until they - until they turn them over, until they're sentenced or until the trial \*\*\* until they're arraigned. And then they're turned over to the county jail as the result of a law the Legislature passed in, I think, in 1943 which made it possible for the cities to keep the prisoners in the - in the county jails or the county prison farms. And incidentally at the expense of the county which we don't like too much. It's the attitude of course of the county government on taxes --

CHAIRMAN O'CONNELL: Let me ask you one question. In the City of Oakland, how are you charging your drunks now?

J. F. COAKLEY: Drunks?

CHAIRMAN O'CONNELL: Yes. Are you using 647 or are you using the local ordinance still?

J. F. COAKLEY: Well, I - ah - can't answer that for sure. I would have to - ah - Mr. Meese? Meese? Here? Come up here. I well, apparently the \*\*\* We don't arrest a man just because he is a common drunk. He has to commit some overt act, like being drunk in a public place or be doing something which is a disturbance of the peace. Isn't that right?

Ed Meese  
Deputy District Attorney  
County of Alameda

ED MEESE: Both the city ordinances and the state law are used. The state law is used in every situation where the crime fits within the requirements of 647 I believe it's F. The - when you have a situation, as you occasionally do, where a person is drunk under circumstances where he is committing a public offense, but is not encompassed within the provisions of 647F, then he is arrested under a city ordinance.

CHAIRMAN O'CONNELL: Would that usually be when he is drunk in other than a public place?

ED MEESE: That's right. Very often you have a situation where a man is drunk and creating a disturbance on the front porch of his home or perhaps even in his own backyard, which is a private place. His wife is unwilling to - neighbors cannot be found for disturbing the peace complaints, yet he is committing a disturbance. There are repeated calls to the police department to do something about it. In that case, the person would be taken in under the city ordinance.

CHAIRMAN O'CONNELL: So 647F does not completely preempt the field?

ED MEESE: There are some situations where it does not. Apparently there have been no, as far as I know, not even any Superior Court Appellate decisions on the subject, yet.

J. F. COAKLEY: One development was that the cities now are using as much - the - 647 because when they make the arrest on 647, then the cost of confinement and custody and everything is on the county. And it saves the city some expense.

CHAIRMAN O'CONNELL: I understand that may be a subject which might be considered in our extraordinary session.

J. F. COAKLEY: I think it certainly should.



CHAIRMAN O'CONNELL: -- not a change in 647F, but a change in the formula of - what do they call it - the apportionment of alcoholic beverage tax funds between the cities and the counties, to give the counties a larger share to compensate them for the additional expense they have.

J. F. COAKLEY: I might say on that subject, Mr. O'Connell, alcohol - drunkenness and alcoholism. Some years ago I made quite a study of the subject of alcoholism and the - at Yale University where they pioneered in that area and the State of Connecticut. And I - as a result of my efforts we started an alcoholic rehabilitation facility in Alameda County out at Santa Rita. And we still have it. And we are trying in that area to approach the subject of drunkenness and alcoholism scientifically. It is my thinking that - it is a medical problem as well as a law enforcement problem. Of course, it is a law enforcement problem because when a man is drunk on - in public on the street, he might be run over by an automobile, he might get hurt, he might, if he's lying in the gutter all night, he might get pneumonia. So it's as much for his protection, for his own good as it is for society, incidentally. But we do, in Alameda County, and we for the past 15 years, since I have been District Attorney, we have been trying to approach this subject and other subjects - narcotics, too - from the standpoint of the medical aspect of it as well as law enforcement. And we have been somewhat successful. Alcoholism is a terrible tax problem. These people are sick; it's a disease just as gambling is a disease and narcotic addiction is. I - in many cases they are to be pitied.

CHAIRMAN O'CONNELL: I have one final question on a different subject. I know that your - how you feel about the Cahan decision --

J. F. COAKLEY: Didn't hear that. Oh, the Cahan decision. Well --

CHAIRMAN O'CONNELL: In view of the decision of the United States Supreme Court in --

J. F. COAKLEY: -- Ohio versus Mapp --

CHAIRMAN O'CONNELL: -- the Mapp case, is it still your position that the Legislature could, by statute, repeal the effects of the Cahan decision?

J. F. COAKLEY: That poses a nice question. The - it would take considerable drafting to probably - but I will say this. Now my thinking is still, right now, I have here a mimeographed copy and I will leave it. I will file it with the committee here as part of my presentation. A speech which I made in St. Louis at the American Bar Association, this - in August of this year. I was

asked to appear on a panel there and talk to the subject of "Is the Public Getting Due Process" and this is the result of my thinking and my effort on that occasion. And --

ASSEMBLYMAN KNOX: Sergeant, will you pick that up, and we will - thank you. Thank you, Mr. Coakley.

J. F. COAKLEY: I will file it with the - with the ... I might say that I still think that as I say here that the Cahan decision and the Mapp decision and the exclusion rule is not justified historically. The due process clause - the due process clause comes to us ... We first see the due process clause in the decree of Konrad II in about the year of 1050 or something on the continent in Europe. And then the next time it came up with the Barons at Runnymede in the form of the Magna Carta. And a period of revisions and revisions and repetitions in the Magna Carta, it evolved and it came down to us through our Founding Fathers.

As I point out in this talk here on page 11 and 12, the great liberal Patrick Henry - even Patrick Henry never contemplated that the Bill of Rights should be used the way it is being used now in Cahan and other decisions. And I call attention to Professor Barrett's article in the Supreme Court Review in which he says, "Whether we are considering personal interest or property interests, however, it would seem clear that those most deserving of protection are the interests, not of the criminal, but of the ordinary law abiding citizen. When Pitt denounced the cider tax and James Otis spoke out against writs of assistance and Patrick Henry opposed the adoption of the Constitution without the Bill of Rights, they were primarily interested in protecting the homes of ordinary persons against indiscriminate and unreasonable governmental invasions. They did not regard the great issue of liberty to be protection against searches for evidence to be used in criminal prosecutions. One may be able to justify on grounds of history if not policy a constitutional doctrine which prefers property interests to personal liberty. But neither history nor policy can justify doctrine which accords special protections for the privacy of lawbreakers which are not enjoyed by citizens generally."

Now, I might say that another area which has to do with police practice which is very, very important and that is the subject of interrogation - statement-taking. It is one of the most important aspects of law enforcement. And that has been curtailed and limited and restricted by the decisions of the higher courts in this state and by the Supreme Court. A very good case to read, very educational is a case which was decided the same day that the Mapp case was decided. The case of *Culombe vs. Connecticut* in which the Supreme Court of the United States reverses a conviction for murder because of the manner in which the confession was obtained. In that case, no so-called third degree was used at all. There was no so-called rubber hose and that sort of thing. There was no physical

violence of any kind. There was no making him go without food or through an extended and protracted period of questioning. The questioning as the decision points out, as Mr. Justice Frankfurter points out in that decision was with courtesy, decorum and yet they held that there was a violation of due process. They now - so that we find there in that case the Supreme Court of the United States as in the Mapp case, extending its supervisory powers which they have always - which they have had since 1914, as a result of the Weeks case, exercised over federal law enforcement. They are now extended to local and state law enforcement in the area of arrests, of search and seizure, of interrogation and police practices. And it's a very interesting development. As a result of that now, I am talking to my police chiefs in my county and I am telling them, "You are going to have to revise your method of operation, you are going to have to have more men who have the skill and know-how in interrogation on duty around the clock."

Many arrests are made at night. We know that in big police departments, they have a skeleton crew on at night in the city hall or the police department. Burglary detail, the robbery detail, all these various details they work in the daytime. They come to work at 8 o'clock in the morning, then they have a line-up, and then after the line-up, each one of these men has a lot of cases to work on and maybe they get around to questioning a man in the afternoon or the next day. They have to have him arraigned, charged and arraigned in not more than 48 hours, as we know. Now, if these decisions - these decisions now - as this case as Mr. Justice Frankfurter's opinion in the Culombe which I mentioned, points out one of the factors which they take into consideration is the period of detention between arrest and confession or admission or statement. That is a factor which Mr. Justice Black and Mr. Justice Douglas says alone - standing alone, per se is sufficient to render a confession involuntary and inadmissible. Now, if this trend continues, police departments are going to have men who are more skilled in interrogation and they are going to have to be on duty right around the clock on duty at night so as soon as the man was brought in, or as soon as he is apprehended, the officer can immediately start questioning him. And that is going to cost a lot more money, I can tell you that.

ASSEMBLYMAN KNOX: Mrs. Thompson, our committee consultant, has a question, Mr. Coakley.

PAMELA THOMPSON: Mr. Coakley, referring back to your recommendation to increase the officer's power to make arrests for misdemeanors, I would like to read a very short statement from the recent Los Angeles Times. It says, "Police Arrest 50 in Park Roundup."

J. F. COAKLEY: I don't hear you. I will have to - Are you talking into this?



PAMELA THOMPSON: No, I am talking into this.

J. F. COAKLEY: Yeah, I couldn't hear you.

PAMELA THOMPSON: Can you hear me now?

J. F. COAKLEY: Yes.

PAMELA THOMPSON: This is an article from the Los Angeles Times, October 29, this year. It says, "Police Arrest 50 in Park Roundup: Teams of police officers equipped with walkie-talkie radios swooped down on the Southside Park on early Saturday and arrested 50 'suspicious characters'. Following the mass roundup in South Park, Newton division officers booked 25 adults and juveniles on charges ranging from curfew violation to suspicion of robbery. The others were released after questioning." I am wondering whether this constitutes lawful arrest under the present law.

J. F. COAKLEY: Well, I would rather not comment on that because I don't know all the circumstances of the situation. Whether or not there was some circumstances which constituted probable cause, I don't know and it does not appear from that short narration of - in the newspaper. So, I would rather not pass judgement on the conduct of the police, if I did not know the circumstances. As I said before, I certainly do not believe that arrests should be made unless there is legal, probable cause, reasonable probable cause.

PAMELA THOMPSON: Referring to your article that you mentioned earlier, on page 6 you say, "It has been said that a civil action against a police officer for alleged misconduct in the performance of his duty, is not a satisfactory remedy. Various alternative proposals..." and then you list several, three, four as a matter of fact "have been advanced." Is there any one of those proposals that you would support?

J. F. COAKLEY: Well, I mentioned here providing insurance coverage by the government and eliminating sovereign immunity for civil damages and the distinction between proprietary and governmental operations. That's one of the alternative proposals. And then, as a matter of fact, in our county our cities have insurance. They have had insurance for a long time - for - to protect the city from damage suits - ah --

PAMELA THOMPSON: For criminal --

J. F. COAKLEY: -- as a result of alleged misconduct of police. And I think that's all right. We find no objections to it. We are doing it now. Now, then --

PAMELA THOMPSON: Until a recent decision, the city wasn't liable was it?

J. F. COAKLEY: Ah --

PAMELA THOMPSON: Wasn't it protected by sovereign immunity?

J. F. COAKLEY: It all depends. In a case which I ... I mentioned this case here the other day - here today - the felonious case in which I prosecuted two officers and they were convicted and went to San Quentin. The City of Oakland was sued. As I recall it, the jury brought in a verdict against the city and the city was held liable for something like seven or eight thousand dollars.

PAMELA THOMPSON: That was the case in which the officer shut the door of the cell on the man's hand?

J. F. COAKLEY: No.

PAMELA THOMPSON: About 1951?

J. F. COAKLEY: No, it was the case of - no, it was the case about - about 1940, Miss Thompson. And the - the officer - this was a man \*\*\* brought in during the night. He had DT's. And when he was in the line-up, standing in the line-up to go down to court, he ran berserk. He went berserk. He was running. The policeman tackled him and jumped him and then they beat him. And the beating - as a result of the beating, he died. He got a severe beating. He got a beating such as no man should receive. I prosecuted the case myself and I said it wasn't necessary. They used unreasonable force. Under the law, they're allowed to use some reasonable - reasonable force to subdue a resisting prisoner. But in that case, the force was, I contended, was unreasonable. We had a great deal of medical testimony and the jury believed my - accepted my argument and the judge - and they convicted them.

PAMELA THOMPSON: The ground on which the city was held liable in this case was that they were aware and had been for some time of this man's previous complaints against the --

J. F. COAKLEY: They had - the grounds, I think was - I didn't get into the city case. That was defended by the city attorney's office. But we do the criminal prosecution work for cities, but not the civil work. We do it, the civil work, for the county school districts and so forth, but not for the cities. Now, as I - so I am not too familiar with the grounds upon which that case turned. I think, however, that it - it - entered into it was that one of these policeman had had trouble before with mistreating --

PAMELA THOMPSON: Yes, they knew about it, but kept him on in spite of that?

J. F. COAKLEY: Yes.

PAMELA THOMPSON: I am not sure I got an answer to whether you would support any one of these changes here.

J. F. COAKLEY: Well, I am not prepared at this time to say whether or not I would approve the complete abrogation of sovereign immunity. That's a subject which is being studied. And there's a moratorium on it now. The Legislature is sitting on that now. We have done considerable work on it. That thing can be used as a harrassment of the city and it could be quite costly. We - it has been here, as you know, in many areas - sovereign immunity has been eliminated. And I guess it's working all right. Now, on the other proposal, well... We have considerable law now under which an officer can be punished if he misbehaves, both federal and state law.

PAMELA THOMPSON: You would not agree then, with the Bill of Rights Committee of the American Bar Association that there is need for a change and that the present protection is inadequate?

J. F. COAKLEY: I am not familiar with the American Bar Association's Civil Rights Committee publication. And I'd better not say whether - not being familiar with it, I can't say whether I approve of or agree with it.

PAMELA THOMPSON: Well, you might check under the hearings before the Subcommittee on Constitutional Rights of the Committee of the Judiciary, United States Senate under Senate Resolution 234, page 68 is the one I am thinking of particularly --

J. F. COAKLEY: I have never read it. I am sorry, I have never read it.

PAMELA THOMPSON: Yes. Well, this is the statement filed with that Committee by the Bill of Rights Subcommittee. And if you have any comments on that that you would like to forward to the committee, we would like to very much have them.

J. F. COAKLEY: I'll try to get a hold of the committee report. I might say that as far as police practices, too, are concerned, there has been I know bills up through the years, to shorten the period of detention. We now have the law which says without unnecessary delay, the man shall be arraigned. And there has been an effort to shorten that. I am, in all frankness, I don't think that it should be shortened because if it did it might work to the disadvantage of the accused. If you - if you make it too short, here is what will happen. The police will come and they will get a complaint, they will make an arrest on thin probable cause. They haven't enough time to make the investigation, to make an adequate investigation. The man - he will have to be charged, he will have the expense of bail if he can get it, an attorney and go through the trial which may take consi - he may get - have to wait. The anxiety of waiting for trial, to be



vindicated would be -- assuming that he is innocent. Now, but where you have the police - where you have an adequate reasonable amount of time for the police to detain the man while making the investigation, if it can result in his being released without any charge being placed against him at all. For instance, if he - if they have time to question him, and he gives an alibi or some kind of a defense, and they go out and check it up and they find that his story is true, they don't - he's not charged at all. He is released without bail and anything else.

PAMELA THOMPSON: Couldn't they question him without arresting him, Mr. Coakley?

J. F. COAKLEY: Well, in some cases, they could and we approve that. We've certainly - we certainly think he should, but there are cases where you cannot, where a robbery has been committed, a murder has been committed, a narcotics case. Some of these cases which arouse the community, which the citizen who has been harmed wants action right now. And if the police didn't make the arrest, question him without making an arrest and let him go and made the investigation after that, they might not find him again. He might flee to another state, it's easy to do. And then they have the expense of extradition, if they find him. And the law abiding citizens, they're not happy about a thing like that, that law enforcement would be criticized.

PAMELA THOMPSON: Mr. Coakley, is it your impression of Section 847 as it was changed in 1957, that it simply codifies the court decisions up to that time, as to civil liability of peace officers?

J. F. COAKLEY: You mean with respect to the arrest made - the citizen arrest by a private person and turning the man over to the police and giving the police immunity from damages in a situation like that? Is that what you are talking about?

PAMELA THOMPSON: I don't think it is restricted just to those arrests. I think it covers a number of arrests. It covers A, B, and C which --

J. F. COAKLEY: Oh, if such arrest was lawful.

ASSEMBLYMAN WOLFRUM: \*\*\* pursuant to private person's arrest.

PAMELA THOMPSON: Well, that's not been the interpretation given to this committee by witnesses who testified on that.

ASSEMBLYMAN WOLFRUM: Don't Sections A, B, and C relate to when such arrest - "such arrest" certainly refers back to the first paragraph.

CHAIRMAN O'CONNELL: I wish it did. We went through this before.

J. F. COAKLEY: When such was lawful... You see, it - this is restricted to a lawful arrest or a felony on reasonable - where the arrest is made on reasonable cause or where it is made pursuant to the crimes in Sections 142, 838 and 839. Now that's the point there. "Such arrest was lawful." Now where the officer makes the arrest as I indicated earlier in the driving while drunk case, the shoplifting case and many other cases, some other cases. Strictly speaking, it's legally an illegal arrest, isn't it? But yet the proprietor of the store where the merchandise has been stolen, he expects the officer to make the arrest, doesn't he?

PAMELA THOMPSON: Well, I am not sure that that answers what I have in mind here. Does this change in the law in 1957 simply codify the judicial decisions on civil liability of peace officers?

J. F. COAKLEY: Well, I am not prepared to answer that question. That's a tough legal question.

PAMELA THOMPSON: Or is it new immunity?

J. F. COAKLEY: I remember when --

PAMELA THOMPSON: Well, the reason first that I --

J. F. COAKLEY: -- I first started to practice law, the senior partner in the firm said, never give an off the cuff horseback opinion on anything unless you know what you are talking about or unless you research it.

PAMELA THOMPSON: Well, we would like to hear your comments on that, if you would like to forward them in writing too. --

J. F. COAKLEY: - All right.

PAMELA THOMPSON: -- because we have had some conflict on that. I note most of the witnesses who have testified have said that it simply codifies the judicial decisions already existing. I believe that was the argument used at the time that it was passed to get it enacted. But, I note that in your footnote No. 26 of this article that you mentioned earlier, you said, "Legislation amending the arrest laws in California is currently pending before the 1957 session of the Legislature. The proposal to amend Section 847 attempts to protect the peace officer in carrying out code requirements by making him immune from liability."

J. F. COAKLEY: Yes.

PAMELA THOMPSON: So that this would imply to me that it does a good deal more than codify the existing judicial decisions.

J. F. COAKLEY: Whether it codifies the decisions, I am not prepared at this time to say. I will have some research done on it, and we will --

PAMELA THOMPSON: But, you would believe then, that it does, however, extend - that it did extend the civil immunity of the peace officer?

J. F. COAKLEY: I don't know. Possibly that footnote I said - I should have said that by making immunity from liability under certain circumstances, in certain situations.

PAMELA THOMPSON: Mr. Coakley, when an arrest is made under Section 849 and the person is released without having been taken before a magistrate, who determines that he might be released in this fashion? Does your office supervise such releases?

J. F. COAKLEY: Well, in some cases, yes. When - we in all cases except a traffic offense and even in some traffic offenses, the officer comes to the District Attorney's office. He presents what evidence he has. If we consider it legally sufficient, that is competent, admissible evidence to support the charge, a complaint is issued. And on the complaint, a warrant is issued. If we don't think so, we tell the police, "You've got to get more evidence" and we will not issue a complaint. And there is no prosecution and then in those cases, the defendant is released. If he is in custody.

PAMELA THOMPSON: But, not everyone who is released is brought to you for this decision?

J. F. COAKLEY: I don't know about that. We -- our rapport and our liaison with the police is - in our county with all our departments, all the agencies \*\*\*

PAMELA THOMPSON: \*\*\* would that be your impression of Alameda County's procedure?

ED MEESE: Well, it is possible that he could. However, the policy in Alameda County is that if there is any question as I say in a misdemeanor case, all felonies are reviewed by us -- in a misdemeanor case if there is any question, he probably shouldn't have been arrested in the first place and normally they are not. In other words, if he was to be taken down to the police station and the case is of such a nature that he then would be released rather than being incarcerated under 849B-1 in the case of a misdemeanor, probably the officer is better advised not to arrest him in the first place and pursue the warrant route rather than an immediate arrest.



PAMELA THOMPSON: But, if of course, he does make the arrest, then he can himself release the man if he decides that it was an unjustified arrest.

ED MEESE: That is what the law provides. I am telling you what the practice is in our county.

PAMELA THOMPSON: Is every person brought in for questioning booked, if he's brought down to the station for questioning?

ED MEESE: Every person who is arrested is booked. Yes. Now, if a person comes down to the station voluntarily to answer questions as most witnesses, for example, do then of course, they are not booked. I must say that in almost every case, there will be some record of a person appearing at the station. But he is not booked unless he is arrested.

CHAIRMAN O'CONNELL: When you use the word "arrest" do you include the person who was brought down to the station involuntarily and who is interrogated and who is then released, and then under an 849B-1, if that's chalked up as a detention only, is that an arrest, as you have been using the term?

ED MEESE: Well, technically, I guess up until the time that he is released that would be considered an arrest. However, as I say, we have very few of these situations. But, here a person is released under 849B-1, he will have been booked, yes.

CHAIRMAN O'CONNELL: He will have been booked.

ED MEESE: Yes.

PAMELA THOMPSON: Is a prisoner ever booked under a name other than his own for any reason?

ED MEESE: Quite often, because he gives us the wrong name. This is not at all an uncommon situation.

PAMELA THOMPSON: Outside of that, is there any use made of any other name?

ED MEESE: Not by the police department. The most important thing that our police are interested in doing is getting the right name, because through the right name they can trace his records and find out if he has been arrested before and generally clear up the crime a lot quicker.

PAMELA THOMPSON: Do you ever have protective custody arrests?

ED MEESE: I am not sure what you mean by the term. Do you mean where somebody --

PAMELA THOMPSON: I am not sure what it means. I am trying to find out. I read about protective custody arrests and I just wonder what that usually involves.

ED MEESE: I have never heard the term used in my experience. We take someone in -- and we have had a lot of people apply to us to take usually husbands to take their wives in or wives to take their husbands into protective custody, I guess, for their own protection. We have a lot of people who ask for peace bonds and things like this. But, we tell them that we are not in the domestic relations business.

PAMELA THOMPSON: Are two phone calls being allowed regularly in your jurisdiction, within three hours of arrest?

ED MEESE: Generally, this is the pattern, yes. You mean one phone call to a relative, friend or attorney or some other person, and one phone call to the bail bondsman.

PAMELA THOMPSON: Yes.

ED MEESE: Yes. As far as I know, we have never had any complaint since 1959 when the phone call law first went in, in our county concerning persons not being allowed their phone calls. And from the bail bond business, I am sure the bail bondsmen are getting there probably quicker than the phone can reach them.

PAMELA THOMPSON: I have just one more question, Mr. Coakley, I think. In this same Congressional hearing that I mentioned earlier, Mr. Coakley, there's a witness named James Scullen, a practicing attorney and former police officer of Washington, D.C., who suggests that as an alternative to the Mallory rule, it might be possible instead to have a more or less public interrogation. Let me see how he mentioned it. He says, "I'm not sure how that would be accomplished, I'm not quite clear, but one situation occurs to me and that is that if an arrested person were taken to a precinct and a confession was to be obtained, that it might be possible to have an objective person, not connected with the police department at all, to record all questions and answers and all statements made by the accused. And if the confession was within the scope of these questions and answers and recorded and played to each trial judge and assuming the case went to trial, then that could remove possibly some of the objections to secret interrogation. Another which occurs to me," he says, "is that if there were available some central place of interrogation, where the press or other persons not connected with the police again were able to listen to that questioning or listing of confession and could so certify and state to the court the circumstances under which it was obtained, this

also would remove the secret aspects of the interrogation by the police." And the idea, of course, is that then there could be no charges of coerced confessions. Would you support that suggestion, either one of them?

J. F. COAKLEY: Well, I don't think it would be - in the first place, it would be very expensive. If you're going to have to have some third party to conduct the interrogation, that - that person has to have considerable training, as much training or more training even than the officer. He has to become familiarized with all the facts of the case and the background of the defendant which the officer has already done and it is a duplication of effort which, of course, obviously would be quite expensive. From that standpoint, I don't think it is necessary, and I don't - wouldn't approve it. Now, furthermore, in these - in these interrogations - this area of interrogation, the police sit down and talk with the man. And they talk about various things. And then they may - might go out and check or they might have a check made on some of the things he says. They come back to him and they ask him about them. The flexibility is an important thing in a situation like this which you would not have if you had this third party and so-called public interrogation.

Now, I might say also that, again, the amount of misconduct, of abuse by the police as far as alleged involuntary confessions are concerned has been grossly exaggerated and I forget who pointed that out in one of these articles, I referred to it in this speech I made in St. Louis. Now, the - we have in Oakland there, in the City of Oakland, in the department, a special section whose duty it is to investigate claims of misconduct, charges of misconduct by the police. And wherever a policeman is guilty of misconduct, he is disciplined, according to the facts of the case. And I think that the - if this is a problem, and certainly in our county, it is not a problem. We have - there - claims, even claims, meritorious or otherwise, of alleged misconduct by police are relatively few and rare. However, if this is a problem, and I must say in passing, I do not agree with the language of the Cahan case, to the effect that the lawlessness of law enforcement and I know what the language of the majority opinion of the Mapp case and some of the dissenting in the Wolf case, I don't agree with it, as far as I know, and I think I know something about it, it is not a problem and it is not general. It is the isolated and relatively rare occurrence.

Now, that the cure - if it is a problem in some places, I say the cure is in education and recruitment. Get better policemen and give them better training. And have better men on the top to establish policies of fairness and propriety with respect to all types of police work and see that they carry it out as we do in Alameda County. And you won't have it. When a policeman does wrong in our county, if it's a criminal offense, he is prosecuted by us. We make no exceptions. And they know that.



CHAIRMAN O'CONNELL: Thank you very much, Mr. Coakley.

J. F. COAKLEY: One other thing I think while I am here... As a result of a meeting of the conference of the California Narcotics Officers, they have - they pointed just recently - it was on December 1st of this year - pointed out the growing problem of dangerous drugs, those other than narcotic drugs. That's become quite a serious problem and it's something that this committee might consider in - I don't know whether it would want to do it as a part of the budget session on a special call, but certainly in 1963.

CHAIRMAN O'CONNELL: We had a hearing on that subject in Los Angeles in November, and we will be glad to furnish you with a copy of the transcript for your information. Thank you very much again, Mr. Coakley. We will recess until two o'clock.

(Whereupon the hearing was duly recessed for lunch.)

CHAIRMAN O'CONNELL: Mr. Cologne will be back in a moment he told me. We'll proceed. Our first witness this afternoon, a Mr. Davenport, I believe, wanted to comment on the use of -- is it 853.6 or 653?

Edward L. Davenport  
Chief Deputy Attorney  
City of Los Angeles

EDWARD L. DAVENPORT: My comments are prompted by the fact that during this \*\*\* and the committee is evidently unaware of the fact that the City of Los Angeles is now making wide use of this section. That we, of course, we put out our own form of ticket, we experimented on a small scale where we originally took a few cases where they would be brought to the station. A superior officer would then go over the facts of the particular type of arrest, as to the particular individual and then he would release them on the signing of the agreement to reappear at the designated place and time. This study and the results of it, the proposed ticket was presented to the Police Commission. The City of Los Angeles is controlled by a five-man civilian Police Commission. The Commission then approved and issued a regulation within the last few weeks, about four weeks ago, where they issued approximately 400 offenses that will be cited by tickets in the field. Now, a great number of these are municipal code violations, but there are a substantial number of state violations, but there are a substantial number of state violations. I, unfortunately, was not presented, or did not have an agenda when I came here. I did not know this topic would be taken up, so I was unable to bring you a copy of that regulation. But I will forward to the committee, a copy of the regulation as put out by the --

CHAIRMAN O'CONNELL: The regulation does include reference to the particular state statutes which --

EDWARD L. DAVENPORT: Yes, it does. These are all listed by number. These are handed out to or distributed throughout the police department along with a ticket book which was devised similar to that issued for traffic citations. That was distributed to the -- or is being distributed at this time to the officers. Now, as I say it has only been in effect in this wide scale for a few weeks. And so we have -- we do not know how well it will work, what the cost will be of carrying out of the program. But on the limited scale as long as the particular sections are well chosen and the individuals who they are issued to are well chosen by the officers, there will be no problem. It should be very successful. I do --

CHAIRMAN O'CONNELL: Did you give any thought to using the same form of citation for these new offenses as has been used in the past for vehicle code violations?

EDWARD L. DAVENPORT: We -- the form that we use is very similar to that. There are -- I don't have them at my fingertips, but the reasons why we thought it was not advisable to use or not possible to use the same citation, I do not as I say --

CHAIRMAN O'CONNELL: I was thinking of the --

EDWARD L. DAVENPORT: -- using one ticket rather than two?

CHAIRMAN O'CONNELL: Yes, the practical matter of the officer being required to carry two sets of citations around with him. If it could be --

EDWARD L. DAVENPORT: -- We went over this some time ago. And there were reasons why that could not be done. And I don't have them... As I say, I am not prepared to speak on the subject.

CHAIRMAN O'CONNELL: I am sure we would be very much appreciative of being informed of the success of your trial project.

EDWARD L. DAVENPORT: As soon as we get the statistics, I will have them forwarded to the committee and I will forward you a copy of the regulations so that you will know what sections --

CHAIRMAN O'CONNELL: Could you have those statistics broken down into types of offenses so that we have a better idea of what misdemeanors under state law lend themselves best to the citation policy?

EDWARD L. DAVENPORT: If we - statistics are kept on those and if we are able to, I certainly will. We have to lend ourselves to the statistics kept by the police department so that if they are not kept, they will just be unavailable.

CHAIRMAN O'CONNELL: I had in mind, not knowing of Los Angeles' experiment, possible amendment to 853.6, to specify certain sections of the Penal Code and other of the state codes for which violations the citation procedure might be made mandatory. Do you see any --

EDWARD L. DAVENPORT: Well, I see a problem in making any of it mandatory. In a police force the size of that in Los Angeles and as you realize spread out over a great area, a lot of these, I think, some discretion should be left to the particular officer. The particular charges that will be used, of course, have been set out in the order and have been selected by the department and approved by the police commission. Now, I would see a problem -- a lot of this would depend on the individual who is being issued the citation. If you have the thought in mind that if you have an established businessman who has been there, you know where he is going to be, you have a person who is employed in the area and has a job, a family, that type of person is certainly the type that we want to select and give citations to. Now, if it is someone who is not of that caliber, then I would think that this would create great problems and expense that ... In other words, if you have an individual that you know isn't going to answer to the citation even though he signs it, it is sort of a waste of time to issue the citation. It is only going to increase the cost and break down the whole program.

CHAIRMAN O'CONNELL: Well, of course, the same criticism might be made of the citation procedures that apply to vehicle code problems.

EDWARD L. DAVENPORT: That is true and we have --

CHAIRMAN O'CONNELL: You don't bother to distinguish there between the --

EDWARD L. DAVENPORT: We have a rock full of warrants waiting to be arrested now and a tremendous bill of trying to serve them.

CHAIRMAN O'CONNELL: Yes, I understand that... There is another problem which I think is obvious, that the law must apply equally to all of us and we can't set up criteria or special --

EDWARD L. DAVENPORT: I would think that in answer to your comment, that is, of course, it's true, but you must consider that like any other thing, this is only one of the things to be considered when



you issue a citation. And then another, probably the most important thing would be the circumstances under which along with the charge, I can - possibly there will be circumstances where it is just not feasible to issue a citation. As it now reads, of course, that discretion is left with the individual department to use it.

Now, the charges we have selected so far and our basis now at this time, these will be issued to everyone. But the thought - and so that we will be equally, there will be no problems such as you have indicated, but I would hate to think of making it mandatory on all cases. For, if some of these charges are - our experiments work out that it is just not feasible, not practical, we get ourselves into a ridiculous situation. I would hate to think that we're therefore stuck with it.

CHAIRMAN O'CONNELL: Do you expect that this experiment of yours will affect a sufficient number of people so that some lessening of congestion in your city jail will manifest itself?

EDWARD L. DAVENPORT: Well, I would think that this would certainly be an aid, though I think a great deal of our problem in congestion in jails is not so much with people awaiting arraignment as it is with people who are doing time, have been sentenced to jail. Most of our, I would say that about 90 per cent or 95 per cent of our people bail out within a relatively short time so that that is not the main cause of jail congestion. To the fact that those people do congest the jail certainly it would be a great effect in lessening it.

CHAIRMAN O'CONNELL: Your congestion, I am sure, must be the case of every big city in the state, is with the drunks, isn't it? Don't they contribute most to congestion?

EDWARD L. DAVENPORT: Well, I am sure they do. But we have had in Los Angeles --

CHAIRMAN O'CONNELL: -- But not just before sentencing.

EDWARD L. DAVENPORT: Yes. After, not before so much as after sentence.

CHAIRMAN O'CONNELL: Your drunks are rounded-up in skid row just the same as they are in San Francisco and Stockton and --

EDWARD L. DAVENPORT: Well, if an individual is found in the street in such a drunken condition that he is causing trouble to the citizenry, he certainly --

CHAIRMAN O'CONNELL: So, you hold overnight until he sobers up. And you may - the judge may let him go in the morning. Judge Clifton, probably either lets him go or sends him out to the farm or wherever.

But I have been down there in Judge Clifton's court and I have seen literally hundreds of people trooping through there. And they must have been held overnight. And I don't know what percentage of the people in your city jail - is it the Lincoln Heights?

EDWARD L. DAVENPORT: Lincoln Heights is the location of the city jail, or one of the city facilities, the main one.

CHAIRMAN O'CONNELL: Isn't that where you have most of your misdemeanants held over night?

EDWARD L. DAVENPORT: Where most of them who are ... Yes - are held over night.

CHAIRMAN O'CONNELL: Most of the congestion there is because of --

EDWARD L. DAVENPORT: Well, not \*\*\* The congestion problem with the drunks is not so much as with the others. They have the adequate facilities for the handling of the drunks. And in other words, that is our main number that ... And there is congestion, but they have - this has been realized for some time. We have made some provision for it. There is a great deal of congestion on that and of course, the change in the law is causing congestion in the county jail. And that, as well, has just become acute, of course.

CHAIRMAN O'CONNELL: What kind of offenses are we talking about amongst these 400 that they use the citation ...

EDWARD L. DAVENPORT: A lot of them, as I say, I have not gone over the list thoroughly, I would think that most of them would be the more technical type offense which would be - fall to the average law abiding citizen might become in contact with. None of these --

CHAIRMAN O'CONNELL: Building code violations and --

EDWARD L. DAVENPORT: Well, they would unlikely be building code violations for this reason, that all the state violations, in other words, violations of such - any of the licensing boards, the contract and license boards, are not handled by arrest. Those are handled by hearings in the office usually. Those people are notified, come in for a hearing. If the violation is clear, the agency does not feel a hearing will accomplish anything that they think the complaint is - the evidence supports the complaint, they - and the complaint is merited; then those are filed and they are given a written letter to appear for arraignment. In other words, it is known as a voluntary appearance. So those people are only arrested if they fail to appear at the arraignment and the court, then, issues a warrant so that the technical violations like building violations, those types of violations, they are not in this category at all. Because arrests are just not

made for those.

CHAIRMAN O'CONNELL: How about unemployment insurance code violations?

EDWARD L. DAVENPORT: Those are handled - if the hearing is merited, the hearing is held in the office. If it is not merited, they are then sent a letter to appear at the time of the arraignment so that this case, stating this case has been filed against you. Your arraignment is set for such and such a date at such and such a court. And you are asked to appear there voluntarily.

CHAIRMAN O'CONNELL: You mean, you don't even arrest people for --

EDWARD L. DAVENPORT: The arrest on that type of violation would be made only if they failed to appear for arraignment.

CHAIRMAN O'CONNELL: So, you already have a modified citation procedure working there?

EDWARD L. DAVENPORT: Yes. In most --

CHAIRMAN O'CONNELL: It is just a letter written to the man telling him to show up and ...

EDWARD L. DAVENPORT: That is correct.

CHAIRMAN O'CONNELL: ... discuss it?

EDWARD L. DAVENPORT: We do that in any type of case where an arrest is not made actually in the field. In other words, even the State Penal Code violations - the normal husband-wife fight, the neighborhood disturbance. If the officer does not see sufficient facts or there is no citizen's arrest made at the time that takes place, we then set that up - notify the parties to come and have a hearing in the office. And then after that, they are told that a complaint will be filed against you and your day of arraignment and they appear voluntarily on that. It works.

CHAIRMAN O'CONNELL: What happens in your UI case where the man does appear in response to your letter and he admits that he got compensation that he wasn't entitled to and further admits that he willfully misrepresented his situation so that he could get the benefit? Do you then retain him?

EDWARD L. DAVENPORT: You are referring that he appears in request to a letter for arraignment in court or where he appears for a hearing in our office?



CHAIRMAN O'CONNELL: Well, that depends on how you handle the situation.

EDWARD L. DAVENPORT: Well, in other words --

CHAIRMAN O'CONNELL: If the charge is made by the Department of Unemployment, that X received \$50 that he was not entitled to and he willfully misrepresented to get it, do you cause a man to be arrested thereupon or do you write him a letter or --

EDWARD L. DAVENPORT: We then send him a letter to appear for arraignment voluntarily. He would be arrested only in the case that he failed to appear for arraignment and the court issued a warrant for him.

CHAIRMAN O'CONNELL: So then --

EDWARD L. DAVENPORT: In other words the circumstance you referred to yesterday could only take place in Los Angeles City if, in fact, the man failed to appear in time for arraignment.

CHAIRMAN O'CONNELL: All right. Mrs. Thompson has a question.

PAMELA THOMPSON: Mr. Davenport, I don't know whether you are the person to whom I should address this question. I wanted to ask it of Mr. Coakley this morning, but perhaps you could give me some information.

EDWARD L. DAVENPORT: Well, I would be much more happy if you had asked it of Mr. Coakley this morning.

PAMELA THOMPSON: Oh, it's really an easy one. You know the recent anti-organized crime legislation that was passed by Congress, I am just wondering --

EDWARD L. DAVENPORT: Well, I certainly would not attempt to answer any question along that line.

PAMELA THOMPSON: Not at all? You mean, not like how it is going to help you out down in Los Angeles?

EDWARD L. DAVENPORT: I really don't know as it will as yet at this time.

PAMELA THOMPSON: Thank you.

CHAIRMAN O'CONNELL: Thank you very much. Mr. Glenn? Mr. Glenn will you identify yourself for the purpose of the record?

Everett M. Glenn  
City Attorney  
City of Sacramento

EVERETT M. GLENN: I have been the city attorney for the last 15 years. I have prepared a very short statement that I have here with reference to what I thought the committee had in mind if the committee would like me --

CHAIRMAN O'CONNELL: We would be very pleased to have you read it to us, please.

EVERETT M. GLENN: All right. It may not deal exactly on all of the points that have been mentioned, but I think that it is pertinent to what our situation is in Sacramento. My name is Everett M. Glenn and at the present time I am the city attorney for the City of Sacramento and have been such for the last 15 years. That as city attorney I do have the supervisory work of advising the police department on all legal matters and particularly with reference to police procedures in the arrests of criminals. That in addition to this, I have supervisory powers over the city prosecutor who has the duty to prosecute and try all misdemeanor actions within the City of Sacramento.

Since receiving your request to appear before the committee, I have examined a number of late cases with reference to the laws of arrests and searches and seizures. The committee already knows there have been a number of decisions in the appellate courts recently on these very subjects. However, in my opinion these laws and the interpretation of them are fundamentally the same as they have been for a long time. Just recently, I read two late cases. One is cited as *People versus Allen* decided November 21st, 1961, reported in 196 ACA, No. 6, page 70. The rule set out in this case with reference to arrest by police officers without a warrant is as follows: "Probable cause for an arrest without a warrant is shown if a man of ordinary caution and prudence would believe and conscientiously entertain a strong suspicion of the accused's guilt."

Another case just decided is *People vs. Williams*, decided November 28th, 1961, reported in 196 ACA, \*\*\*, page 951. And the rule in that case is: "Reasonable cause for an arrest without a warrant may consist of information obtained from informants who are known to the officer to be reliable and whom the officer, in good faith, believes to be trustworthy. Whether an informant possesses such reliability as to justify an arrest without a warrant in reliance on information furnished him by the person, presents a factual question to be determined by the trial court in the exercise of sound discretion." In my opinion, these late cases are a proper expression of the present laws of arrest. So far as I know the police department and the city prosecutor's office generally follow such rules of procedure in the

operation of their departments. I would be glad to answer any questions with reference to any such matter that the committee desires to inquire about.

CHAIRMAN O'CONNELL: Let me ask -- in the latter case you suggested - or cited, *People vs. Williams*?

EVERETT M. GLENN: Yes, I have --

CHAIRMAN O'CONNELL: Assuming - was that a felony case?

EVERETT M. GLENN: Yes, they were both with reference to narcotics, I think.

CHAIRMAN O'CONNELL: Yes. Well -

EVERETT M. GLENN: And I have the decisions here.

CHAIRMAN O'CONNELL: In any case - Do you understand the law to be that the question of whether the officer had reasonable cause to make the arrest without the warrant is a matter to be decided by the court as distinguished from the jury?

EVERETT M. GLENN: I think that's true, yes. In other words, the court is going to have to rule upon the validity of the arrest and the type of evidence that is presented.

CHAIRMAN O'CONNELL: So, preliminary hearing on the felony charge, the municipal court here in Sacramento - the judge - would decide whether or not there was reasonable cause to make the arrest, and he would make the same determination in the absence of the jury on a misdemeanor case?

EVERETT M. GLENN: I think that is true. However, some of these questions come up in cases where the persons make contentions that they have been wrongfully arrested or they make a petition for a writ of habeas corpus and then those matters go up on appeal to determine whether or not the proceedings should be proceeded with and whether the evidence gained was wrongfully gotten. However ...

CHAIRMAN O'CONNELL: Do you -- Excuse me, were you about to say something more?

EVERETT M. GLENN: I shouldn't -

CHAIRMAN O'CONNELL: I didn't want to interrupt you.

EVERETT M. GLENN: Oh no! I didn't have anything further.



CHAIRMAN O'CONNELL: Do you or does your office have anything to do with complaints which might be made concerning alleged police brutality in the city?

EVERETT M. GLENN: Yes. Our office does. We handle the claims for civil damages in those types of cases.

CHAIRMAN O'CONNELL: You have nothing to do with the disciplinary problem?

EVERETT M. GLENN: No, we haven't anything to do with the disciplinary problem. The only thing that our office takes care of is where there are complaints or civil complaints filed in those type of actions, we handle them. In other words, we process them. Some are processed through our insurance carrier and some through our office, depending on the type of action that is filed.

CHAIRMAN O'CONNELL: Is it your practice to tender the defense of the claims against the city to your insurance company?

EVERETT M. GLENN: I couldn't quite understand that question?

CHAIRMAN O'CONNELL: Is it your policy to tender the defense of claims to your insurance company?

EVERETT M. GLENN: Oh yes. Yes, it is because we are paying for that insurance and that if the complaint that is filed comes within the purview of the terms of our insurance, naturally we have to notify them that this is a case that they handle.

CHAIRMAN O'CONNELL: Does your policy insure the City of Sacramento for the negligence of peace officers committed during the course and scope of their employment?

EVERETT M. GLENN: Not in so many words. The policy of the city protects the city from all claims for damages by reason of any negligence or wrongful action of the city or any of its officers. And there is - in those type of cases there is sort of an in-between there where we are able to try and get them to get a defense. Sometimes they refuse it.

CHAIRMAN O'CONNELL: Well, the rule of respondeat superior does not apply as between the city and one of its peace officers.

EVERETT M. GLENN: No. Where they claim something beyond negligence, that is right. Where they are claiming malicious action, that is right. In other words, the city can not be charged with malicious... In those types of cases, the city makes a demurrer or a legal objection and we usually get those out.

CHAIRMAN O'CONNELL: Well, does your policy cover for false arrest?

EVERETT M. GLENN: No.

CHAIRMAN O'CONNELL: Or for false imprisonment?

EVERETT M. GLENN: No. No. I don't think it does. No. Those are types of cases that our insurance carrier would not handle. Of course, they might have to handle it if the city was named there.

CHAIRMAN O'CONNELL: The policeman who is employed by the City of Sacramento would then, if he makes a false arrest and is found liable to the person arrested, the damages --

EVERETT M. GLENN: -- He would have to pay it himself.

CHAIRMAN O'CONNELL: He has to pay it himself, unless he happens to have a policy of his own.

EVERETT M. GLENN: Yes, that is right.

CHAIRMAN O'CONNELL: And the city does not provide such an insurance policy for its peace officers?

EVERETT M. GLENN: No, we do not.

CHAIRMAN O'CONNELL: Mrs. Thompson has a question.

PAMELA THOMPSON: Mr. Glenn, I am not certain - I do not have the clipping before me - but it seems to me that a few weeks ago I read in the local paper an account of a complaint that was made to the City Council about one of these police complaints that you had investigated and found to be without merit. Do you recall that case?

EVERETT M. GLENN: Yes. There has been one in the papers recently. And the city has denied it. It is - you mean the one where the man is supposed to have lost his eye? Is that it?

PAMELA THOMPSON: I don't recall the particular - the details of the case.

EVERETT M. GLENN: That matter is still... They have filed a claim against the city and the city has denied it. And now we may be in the process of defending a suit on it.

PAMELA THOMPSON: Well, the question that I had in mind was, what is the procedure at the present time for filing such a complaint? With whom does one file it and who investigates it? Are you now charged by the council with the responsibility of investigating these

complaints and seeing whether they are unfounded?

EVERETT M. GLENN: No. I think that is either up to the chief of police or the administrative branch of the city. All we do is defend the legal action when it is filed. But we do not make -- our office, we only have two men, myself and one other man, and we have to handle all of the civil affairs of the city. So we do not do any investigation.

PAMELA THOMPSON: Thank you very much.

EVERETT M. GLENN: Does that answer your question?

PAMELA THOMPSON: I will get my original story and if I have any questions left, I will check with you by mail. Thank you.

CHAIRMAN O'CONNELL: Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Where you have a civil liability suit filed against the city, do you make an independent investigation in your office?

EVERETT M. GLENN: We - all we do is check the reports that are sent to us by the police department. That is all our office does. When the matter comes up for trial, we do bring the witnesses in, but we don't have any investigative sources at all, in my office. We just rely upon the reports of the police department because they have an adequate force there.

ASSEMBLYMAN WOLFRUM: Thank you.

CHAIRMAN O'CONNELL: Do you prosecute any criminal actions at all?

EVERETT M. GLENN: No. I do not personally. I have two men under me in our department that do all of that. They handle all of the misdemeanor work.

CHAIRMAN O'CONNELL: -- in Sacramento City?

EVERETT M. GLENN: In Sacramento, yes. I have done that.

CHAIRMAN O'CONNELL: Mr. Price, then, prosecutes all the felonies?

EVERETT M. GLENN: He prosecutes all the felonies and --

CHAIRMAN O'CONNELL: -- All the misdemeanors outside of Sacramento City?



EVERETT M. GLENN: -- outside of the city. But our office acts independent and does all of that work. I have two men and, as I say, all that I do is supervise them and help them when they are - when they need it.

CHAIRMAN O'CONNELL: Are the services of your public defender in this county made available to defendants in misdemeanor ...

EVERETT M. GLENN: No, they are not to my knowledge.

CHAIRMAN O'CONNELL: Mrs. Thompson has another question.

PAMELA THOMPSON: Mr. Glenn, I am not quite sure on that. Now, what is the procedure at the present time? Who does investigate the charges of this kind? Did you say the chief of police?

EVERETT M. GLENN: Yes. The police department does that.

PAMELA THOMPSON: Thank you very much.

CHAIRMAN O'CONNELL: Thank you, Mr. Glenn.

EVERETT M. GLENN: Thank you.

CHAIRMAN O'CONNELL: Mr. Stout?

Gregory F. Stout  
Criminal Defense Attorney  
San Francisco

CHAIRMAN O'CONNELL: All right.

ASSEMBLYMAN WOLFRUM: Representing?

GREGORY F. STOUT: Representing no organization. I am a member of a number of organizations, Mr. Wolfrum, but I am representing no one today.

CHAIRMAN O'CONNELL: Do you have ...

GREGORY F. STOUT: I have no prepared statement.

CHAIRMAN O'CONNELL: Do you have some comments you would like to make?

GREGORY F. STOUT: I was listening to Mr. Davenport from the Los Angeles District Attorney's department discuss the problem of citation - the use of citation - on misdemeanors. I think the real chief difficulty in the use of - the widespread use of - citations in misdemeanors is that most traffic violations go out by merely the

forfeiture of bail. And the use of the citation form, in that case, carries with it a bail schedule on the backside which if you don't wish to protest the tag you automatically deposit within the time and that is it. The question would be, in misdemeanors, is whether or not the judges are going to allow the prerogative of sentencing and trial and so forth to be usurped by the mere deposit of the bail and forfeiture of bail in lieu of further criminal proceedings in court. There are a number of sections, a lot of code sections in codes other than the Penal Code, that seem to me to lend themselves to this type of procedure. But at the moment, I think that we have to consider that the form employed by vehicle departments, traffic enforcement, is really not an appropriate form for widespread use in citations. It would require some considerable modification.

CHAIRMAN O'CONNELL: Apparently that is what the Los Angeles City Attorney's office found, as I understand - understood from Mr. Davenport's testimony that they gave some consideration to combining the forms, but decided that there were too many complications and that a separate form --

GREGORY F. STOUT: -- could be used.

CHAIRMAN O'CONNELL: -- had to be used.

GREGORY F. STOUT: It seems to me that we might consider the use of a system that is employed in the federal courts. The issuance of summons in lieu of physical arrest. You have --

CHAIRMAN O'CONNELL: -- whether you call it a summons or a citation --

GREGORY F. STOUT: A summons, a summons - a citation ...

CHAIRMAN O'CONNELL: It is the same thing.

GREGORY F. STOUT: But in any event, a subsequent administrative act not performed necessarily by the arresting officer, but done by an agency - a district attorney's office, a county counsel's office, a city attorney's office - after an examination of the report that is filed. In other words, it would give them a chance to screen the situation based upon the report that is in their hand and to determine whether or not a summons should issue. Under those circumstances, it would be like the felony suspicion booking that we do employ, but on the other hand it would perhaps get rid of a lot of procedures that might not necessarily have to be employed if a screening process of that nature were employed.

CHAIRMAN O'CONNELL: Well, the felony suspicion booking is indistinguishable in law from the felony booking, isn't it?

GREGORY F. STOUT: Basically, yes.

CHAIRMAN O'CONNELL: In this case - in a case, the person is taken into custody, is released only if he makes bail, or gets out on a writ, or he is found not guilty, or the charge is dismissed in some way, but we are talking now about trying to streamline the arrest procedures so that, number one, we do not have to make so many of them.

GREGORY F. STOUT: I understand that. And that is why I suggested that perhaps the arresting officer or the would-be arresting officer would - need not necessarily lose jurisdiction over the case, if he fails to bring the person in and book him. He would merely file his report and on the basis of that subsequent clearing action, by some authority, then a summons would issue. But it would be the responsibility of the next-step agency to determine whether or not a summons would issue. This would perhaps assist in the overcrowded jail situation and the drunk tank situation - the sheriff's \*\*\* situation. It would certainly have the effect, I think, of cutting down some of the book work that is presently the result of physically arresting somebody and going through all of the statistical report systems that are required by CII and the FBI.

CHAIRMAN O'CONNELL: Well, that appears to me as being one reason why law enforcement might not take very kindly to a more liberal use of this citation system. It seems to me that law enforcement might say that well, if we take a man in and we book him, we take his fingerprints and so on, we can send those - his description with prints and all to CII and FBI and find out if he is wanted for anything, number one.

GREGORY F. STOUT: That is true.

CHAIRMAN O'CONNELL: And if we merely cited him, he might evade us forever when he was wanted for, say, murder.

GREGORY F. STOUT: Well, I think we can consider a great number of - I won't call them supposititious situations. They do occur in fact where a person is arrested for drunk driving or disturbing the peace or whatever the case may be and it turns out that he is wanted in Illinois or in Alabama or wherever for escape, murder and so forth. Sure, this is true, but this kind of situation is a rare bird. And it seems to me that we don't necessarily have to frame our procedures around the rarest of all possible birds. We can take a broad look at the situation rather than impelling the citizen to go through this kind of indignity.

CHAIRMAN O'CONNELL: Following that line of thought, it would be logical to take everybody who commits a minor vehicle code violation into custody to find if he is wanted --



GREGORY F. STOUT: -- for murder. You see, let us face one very severe problem. In the last 60 years, we have used penal code violations for practically all forms of law enforcement, whether it was basically a civil matter or not. We employ the criminal penal device as a method of enforcement. Well, we can carry this thing to an extreme and require booking and fingerprinting and mugging and doing all of the rest of it in all situations. Or we can take the view that most of this is basically civil enforcement, utilizing and employing the criminal court device as a means of enforcement. If we do that, then we can look to those sections which are essentially civil law enforcement and say that in these situations, let us not employ the full, rigorous procedure of the felony type of booking or the high misdemeanor form of booking. But use a different form that is not so rigorous in its effects on the citizen. It seems to me it makes rather good sense. Dean Pound wrote a book on the history of criminal law in the United States in which he points out this phenomenon of the last 100 years. The criminal courts are now employed to enforce material that was essentially civil law in origin and nature and really properly belongs on that side of the court rather than on the criminal side. But we use it as a catchall now.

CHAIRMAN O'CONNELL: Crimes which are mala in se and crimes which are mala prohibita?

GREGORY F. STOUT: Well... No, I could not have sworn on that and just as soon not. I did not hear anything, by any of the gentlemen - I actually heard two, Mr. Glenn and Mr. Davenport. I did not hear anything from them about Mapp vs. Ohio. There is a very interesting --

CHAIRMAN O'CONNELL: We touched on that this morning.

GREGORY F. STOUT: There is a very interesting thing that has been done by Judge Sobel of Kings County which is Brooklyn, essentially. He has got a 150-page analysis of cases in the United States since Mapp vs. Ohio. It is basically a guide to be employed by states that had never had the exclusionary rule. New York's never had the exclusionary rule. Ohio obviously has not. Illinois has but its procedure is a little bit - its experience with the exclusionary rule is quite a little bit different from California's. But this is available. I would suggest that Judge Sobel might be willing to send some of these out here. It is an excellently done job. It points out basically the problem of procedural due process in this area, how some jurisdictions in other areas like in the confession area -- The New York Court of Appeals is far more liberal on procedural due process on confessions than is California for example. And he points these things out. He covers a rather broad brush and scope of analysis to the laws of arrest, search and seizure, eavesdropping, the various problems that are associated with that area. It is an excellent analysis. It is one that I have in my possession. I did

not bring it up with me because I did not think perhaps you gentlemen might be interested in it, but it is an excellent review of the subject.

CHAIRMAN O'CONNELL: Do you think the Mapp case modified in any way the law of California?

GREGORY F. STOUT: I am sure it has. I would --

CHAIRMAN O'CONNELL: Does anybody know --

GREGORY F. STOUT: No, nobody knows...

CHAIRMAN O'CONNELL: -- to what extent Mapp has ...

GREGORY F. STOUT: I don't know, but I would predict and my predictions have been somewhat valid in the past. As I understand it, the California Appellate Courts now take the position that Mapp does not basically affect California procedures under Cahan and subsequent cases. I disagree. My feeling is that Wolfe vs. Colorado is about as good as a beaver pelt up on the wall. It has no essential validity anymore. And the theory that this is a rule of evidence is now dissipated. This you can not deal with willy-nilly as a rule of evidence as is procedural due process, 14th Amendment, due process, and so forth.

Well, it seems to me that what we have done is, basically, incorporated the federal cases in California procedure and where they are in conflict with the California decisions that came out of Mapp, Berger, I think the ultimate decision will be, and this will have to await determination of the Supreme Court of the United States, is that the federal rules prevail. Now there are situations where the federal rules are a good deal more stringent than the California rules. There are some areas where they are laxer, but it seems to me that this is what Mapp vs. Ohio basically has done with our situation.

I won't say that this is going to be a general catchall prediction. I think it will depend upon the area of search-seizure that we are involved with whether Mapp vs. Ohio in a given federal rule will supercede a given California rule. It is going to take an ad hoc type of determination before we are sure of these things. But this is the considered opinion of my brothers throughout the country. that have had a chance to look at Mapp and to discuss it in their various jurisdictions with their trial judges and so forth.

CHAIRMAN O'CONNELL: Conversely, it would be possible for the California courts or for the California Legislature to relax the exclusionary rule in California --

GREGORY F. STOUT: -- relax it? --

CHAIRMAN O'CONNELL: -- to the point where it was not in conflict with the federal rules.

GREGORY F. STOUT: Well, let us put it this way. The Supreme Court of California under Article I, Section 13, has a pretty broad discretion in declaring what is procedural due process in California just as the Court of Appeals of the State of New York has in a similar area. There are a number of state jurisdictions throughout the country which have under their due process provisions of their respective constitutions imposed higher standards upon their peace officers than is imposed by the floor, so to speak, that the 5th and 14th enforced by the Supreme Court of the United States applies to the several states. For example, in the Court of Appeals of New York they have extended Spanno vs. New York. The situation of arrest and taking of a confession in the post arrest period and prior to arraignment or in the post arraignment period, well beyond the constitutional floor that the Supreme Court has put on it in Spanno versus New York. In People versus De Biasi, People vs. Waterfield, they have held that a post arraignment confession taken in the absence of defense counsel is procedural due process violation and they have vitiated convictions under those circumstances. So they have said in many areas where our Supreme Court has refused to give a more stringent meaning to, due process that - and this is true throughout the country. There are a number of jurisdictions in other areas where higher standards than the floor - the minimal floor - is imposed.

CHAIRMAN O'CONNELL: Well, that's what I was suggesting that if California's standards are higher according to the way we use the term - the courts or the Legislature could lower those standards to the extent that they would not be in conflict with the federal rules.

GREGORY F. STOUT: Or preserve the present standards of enforcement of the constitutional provision against unreasonable searches and seizures.

CHAIRMAN O'CONNELL: We can go - the state of our law on evidence is probably such that we can go for higher standards in all cases. Now, we can --

GREGORY F. STOUT: I would hope we could.

CHAIRMAN O'CONNELL: -- make for lower standards in some cases.

GREGORY F. STOUT: If we are presently higher than due process minimal standards require. There is no question but what we could lower our standards legislatively, if we are mindful.



CHAIRMAN O'CONNELL: I was trying to find out what Mr. Coakley meant this morning when he intimated that the Mapp case did not finally dispose of the exclusionary rule in California.

GREGORY F. STOUT: Well, if it doesn't, I wonder what else is going to be necessary.

CHAIRMAN O'CONNELL: I suspect that is what he may mean. Probably the only thing he could have meant. But ...

GREGORY F. STOUT: Yes. At least in Mapp, it serves to put a universal floor under the decisions of the 50 odd state supreme courts. This is what it does do. But in a state like California which adopted the exclusionary rule in 1955, well, as I indicated in some areas, we are stricter and demand higher standards than is commensurately required by federal enforcement officers. There are other areas, though, where the federal system is much tighter. And the McNabb-Mallory rule has done wonders on the federal side to getting people arraigned promptly, getting them before the commissioner at the first available moment. It has done a fine job of tightening up federal enforcement. 849 as we have it is probably denied more often than it is effectively carried out.

CHAIRMAN O'CONNELL: Mr. Wolfrum.

ASSEMBLYMAN WOLFRUM: Mr. Stout, do you see any connection or correlation between the increase in crime in California taking our own Attorney General's figures for the years 1959 and 1960 where he said something like a 19 per cent increase ... Do you see any correlation in this increase in crime and some of these court decisions that may have affected adversely the ability of law enforcement to enforce the law or to bring these cases to court?

GREGORY F. STOUT: No sir. The question of increased incidence of crime is, I think, not ever traceable to a single situation, that is, adverse appellate court decisions. I think anybody who would claim that Cahan, Berger and associated cases operate adversely to affect law enforcement as the sole cause tend to overlook a great many other problems. We have a tremendous in-migration in California, as I see it, from areas that are essentially economically depressed. We have an in-migration of the lowest possible labor market product - the fringe employable at the extreme. And we have a welfare system that will keep them reasonably going up to a point and it is perfectly obvious, in some cases, better than they have lived before. But, still, this is one of the things that is conducive to crime.

The anthropologists, the sociologists, the criminologists that I have read on the subject of the origin of crime and the increase of crime in California, give a multitude of causes to it, one of which is obviously the tremendous growth in the state's population and its

urban population, the dislocations of urbanization that have affected us very acutely since 1942. We have not digested these tremendous groups of people that have descended upon us except in a very superficial way. And until we have thoroughly digested them, it seems to me we are going to have these crises whether they want to be called deviant behavior or crime or whatever. So to ascribe a crime increase to a series of court decisions overlooks a much broader spectrum. It really has more --

ASSEMBLYMAN WOLFRUM: Would you agree that it is a contributing factor, Mr. Stout?

GREGORY F. STOUT: I would say ... First of all, may I say that as a criminal defense lawyer, I am very aware of the problem of crime and I would not want to see law enforcement hampered. I don't believe in hampering law enforcement as a citizen, as a family man in California, as a person who has an abiding interest in the state and how it - we hope it will function. I don't want to see law enforcement hampered; but on the other hand, I have a very vivid recollection of the - oh, what was that report? The report - an interim committee of the federal government in the 1940's. I can't even think of the name of the report. Anyhow, discussing the problem of lawless law enforcement.

CHAIRMAN O'CONNELL: The Wickersham Report.

GREGORY F. STOUT: Wickersham! Thank you, John. I could not recall it.

CHAIRMAN O'CONNELL: 1931.

GREGORY F. STOUT: This is an ancient piece, that Wickersham Report, but, it has been relied upon by judges of the Supreme Court of the United States constantly. Now, where you do have a potential lawless law enforcement situation, you have to curb it. I think any of us who look at the situation that's prompted by Cahan would have to consider that there were a whole number of cases that went to the Supreme Court of United States from California that, in effect, indicated lawlessness on the part of law enforcement officers. The Supreme Court of the United States told California, "Look, if you don't, we'll ram it down your throat." And essentially this is what Cahan came from. Now, it is useless for me to say that there will be - that Cahan abolishes lawlessness or the Wickersham Report increases protection and the use of good law enforcement. These things happen and we ought to do whatever we can to rectify a situation.

ASSEMBLYMAN WOLFRUM: Well, I think that's agreed.

GREGORY F. STOUT: That's a horrible answer, but ...

ASSEMBLYMAN WOLFRUM: I think we all agree that law is what the judges say it is and particularly the U. S. Supreme Court. But, I don't think --

GREGORY F. STOUT: Well, that's something that Justice Jackson said in the Magnolia oil case. I don't know. I think the Supreme Court particularly --

ASSEMBLYMAN WOLFRUM: -- I think at times --

GREGORY F. STOUT: -- Justice Frankfurter would disagree with you.

ASSEMBLYMAN WOLFRUM: --the \*\*\* of law enforcement, probably the law enforcement officer that didn't really know what the law is until it is decided in many of these cases.

GREGORY F. STOUT: I am afraid there is a lot of truth in what you say, Mr. Wolfrum. I - fundamentally have been in law enforcement myself as an assistant prosecutor in San Francisco for five years. I have taught law enforcement for 10 years. To me, the answer is uplifting the quality of the people that we put in law enforcement and giving them a sense of obligation to the general citizenry. I am afraid that sometimes we overlook this problem.

ASSEMBLYMAN WOLFRUM: I think we are agreed on that point, Mr. Stout.

GREGORY F. STOUT: Yes.

ASSEMBLYMAN WOLFRUM: One other question I would like to ask you as an experienced individual in the field of law enforcement. Do you have any suggestions as to how we could, how the Legislature in effect could assist in decreasing the number of attacks against police officers? This has become an increasing problem in this state, and I would appreciate your suggestions along this line.

GREGORY F. STOUT: We have had a rash of this in San Francisco. It is the hardest thing in the world to try and give you an answer that would be of assistance. I don't know how you can instill respect for law enforcement in people who have never had experience with decent law enforcement before. I am reminded constantly, because my family had been in this state for almost a 100 years, of the fact that there is still vestigial remnants of extreme hatred by our people of Chinese ancestry against the white man -- as a result of the way they were treated in the Gold Rush camps and on the railroads. There are some places where they can't even go yet in California and live as normal people. Now, the same is true with our recent in-migrants. This is going to take time. Law enforcement is going to have to suffer,



it seems to me, a tremendous number of indignities before this thing settles down, if it ever settles down. As I see the situation, we are powerless until this horde of in-migration stops or at least settles down a little bit. We are taking in too many people to digest at the moment. And you are going to have these excesses.

ASSEMBLYMAN WOLFRUM: Until we get a chance to homogenize or something?

GREGORY F. STOUT: I think the word homogenization is an awfully good word. I remember when I was a boy traveling with my father down through the valley, seeing those camps of people that had come in from the Dust Bowl, living under the bridges and along side of the streams, under the highway -- culverts situations. Today, they are ingested, they are homogenized.

ASSEMBLYMAN WOLFRUM: Driving Cadillacs and so forth?

GREGORY F. STOUT: Yes sir. But, this is a pretty horrible experience when we are going through it. I wish there were some shortcut to it, but after all we do take in 18-year-olds into the armed forces. They can't drink under the laws of California, so what do they do? They falsify their ID cards to get a drink. It may be a felony under federal rule but they are more anxious to get a drink than they are to abide with a felony law of the United States. Now, this is a simple and a rather stupid and coarse example. But this is the kind of feeling the citizenry has. They are willing to take these risks.

I am concerned with the whole new group of people that I see coming through my office, people that - boys, 20, 21, 22, 23 from good upper-class, middle-class families who are really going into crime because they want a fast buck or they want a thrill situation. I have a couple of bank robbers - federal bank robbers - in my office now that just shock me. People that have had three and four years of college, good family backgrounds. The last person in the world you would suspect of being a potentially dangerous criminal, because these are armed robbery situations, where people that are involved in the Corvette theft racket in California. I think we have some 300 Corvettes registered in San Francisco -- at least a 100 of them have gone through the process of theft and alteration according to the FBI on theft - auto thefts. How do you change attitudes? This is the real significant problem - changes of attitudes.

ASSEMBLYMAN WOLFRUM: Thank you very much, Mr. Stout.

GREGORY F. STOUT: Thank you, sir.

CHAIRMAN O'CONNELL: Do you have any recommendations as to any changes that we should make in the laws of arrest that you - that you know of, other than those you know we are already familiar with?

GREGORY F. STOUT: Yes. I am reasonably familiar with the changes you made in 1957. I think they have basically worked out pretty well. Law of arrest I think has to remain flexible. I would not want to see basic changes in the present law of arrest. You people did a good job in 1957 in changing it. There is only one problem that bothers me and has bothered me on this phase and that is the problem of bail in grand jury bench warrants from another county. Unless - there is no requirement that if you, for example, the grand jury of San Joaquin County and Superior Court of San Joaquin County where indictment has been returned and bench warrant issued, bail fixed on the indictment, the defendant is in San Francisco County as an example. The San Joaquin Sheriff's Department officers come into San Francisco County, arrest him. Now, the normal procedure is in misdemeanors and in charges of felony where bail is set, that you take him before a magistrate of the county where he is arrested and book him there, permitting him to make bail in that county.

CHAIRMAN O'CONNELL: That was the law prior to 1957.

GREGORY F. STOUT: Yes.

CHAIRMAN O'CONNELL: But, we changed it in 1957 to provide that the --

GREGORY F. STOUT: -- that you can make bail in that county under a grand jury indictment?

CHAIRMAN O'CONNELL: No, the 1957 change, I believe, \*\*\* the burden on the arrested person to demand that he be taken before the magistrate in the county of arrest as distinguished from the county where the offense is alleged to have been committed.

GREGORY F. STOUT: Let us put it this way. It is no great inconvenience to the out of county enforcing officers if they will book him at the clerk's office at the court of competent jurisdiction in that county and let him make bail there. It is no different from anything else unless a device that would be --

CHAIRMAN O'CONNELL: I had a bill on that last session that was defeated. I think you spoke against it, Chet.

ASSEMBLYMAN WOLFRUM: Not that one.

GREGORY F. STOUT: There is that gap in the situation and I think it ought to be uniformly treated.

CHAIRMAN O'CONNELL: It was lost in the Senate, I am told.

GREGORY F. STOUT: I don't know why, it occurs to me that there are some things that you all might consider. I came up here

with a couple of mental notes that I wanted to possibly express. I know that the Governor's Commission on Insanity is reviewing this problem on a broad level, but just as a matter of quick statement, Section 26 referring to responsibility. There are two phrases in there that have absolutely no currency at all. One of them is the lunatic and the other is the idiot. And they could be gotten out of that law so fast without affecting the Governor's Commission's report - ultimate report - and let this thing really have some currency. Those concepts are nineteenth century in their origin and even earlier than that. And they really have no currency at all. This is another curiosity --

CHAIRMAN O'CONNELL: That would not be a substantive change in the law if we --

GREGORY F. STOUT: No, it would just be getting it down to something that was more consistent with mid-twentieth century thinking, that's all. There's another beauty in the 261 section referring to the girl being unable to consent by virtue of temporary insanity. We have a whole host of cases on the question of the non-existence of temporary insanity under the laws of homicide. There just ain't no baby like a temporary insanity. Yet, we have enshrined it, I think it is in subdivision three of 261. The Supreme Court has said time after time after time there is no such thing as temporary insanity or partial insanity or whatever. We've got these anachronisms that just could be gotten out so easily without changing anybody's disposition one way or another.

CHAIRMAN O'CONNELL: Those rape sections are sacrosanct around here.

GREGORY F. STOUT: Oh, I didn't realize that. The State Bar Association's going to try to come before you people and lower the age of consent law. I was on the committee on the State Bar studying that one.

CHAIRMAN O'CONNELL: Well, I hope they find \*\*\*

GREGORY F. STOUT: I don't know why they're sacrosanct.

CHAIRMAN O'CONNELL: Didn't Mr. Pattee have such a bill at the last session?

GREGORY F. STOUT: The State Bar at the convention recommended a reduction in the age of consent to, I think, 15.

CHAIRMAN O'CONNELL: 16.

GREGORY F. STOUT: 16, yes.



CHAIRMAN O'CONNELL: Mr. Pattee had such a bill, I think ...

GREGORY F. STOUT: Well, is that - there is one other thing that --

CHAIRMAN O'CONNELL: I think that applies to Monterey County only.

GREGORY F. STOUT: Special legislation. There is one problem that we run into on the defense where a person is indicted before the grand jury and you don't have an opportunity to cross examine witnesses presented by the prosecution. A number of what you might call personal defenses, like constitutional defenses can't be raised. Now, we have no way at the moment, short of a trial posture, of raising those constitutional issues. An affidavit device is unavailing. But it seems to us, and the County Bar Association of San Francisco, the Criminal Justice Committee of which I am chairman, has considered this. And we thought in terms of permitting the trial judge to whom the case is assigned for trial on a pre-trial basis conducting a pre-trial hearing type of thing wherein the personal defense could be raised by witnesses and incorporated in the transcript of the grand jury for purposes of a 995 motion - motion to dismiss or discharge. This would permit an influx of new evidence into the 995 motion that would expand the grand jury transcript and give us a chance to raise personal defense issues. I was permitted by the District Attorney to do this in San Francisco and we obviated a trial, not by this device but by the affidavit device. They saw the affidavits; they investigated the people who made the affidavits. They found that they were correct; they moved to dismiss the case. Now, this has a way of streamlining the situation. This is a gimmick that you might consider. It might help the situation a little bit. It is not a big issue but it would help.

CHAIRMAN O'CONNELL: Mrs. Thompson.

PAMELA THOMPSON: Mr. Stout, have you considered the combination of Section 834A as amended in 1957 and -- It's on page 25.

GREGORY F. STOUT: Is this the duty to submit?

PAMELA THOMPSON: Yes. What that does in combination with Section 148 ...

GREGORY F. STOUT: Well, you've got a Section like 148. I've forgotten the number of the section. It's a five year felony. Practically speaking, 148 and this five year felony are now enforced. Let me put it this way. The right to resist an unlawful arrest which predated this amendment seems to me was kind of a law of the jungle. This was the law of self help. And I don't think it's particularly

helpful in an urban community to rely on the law of self help. To me the duty is of the citizen to submit and particularly if you know that he's a police officer. 148 and this felony section - the number of that one escapes me at the moment, but I know it - 78 maybe or something along in there? It's in the early sections of the code. In any event, it's a rough felony and practically speaking, it's the same as 148. Now, I frankly Mrs. Thompson, I don't have much use for self help.

PAMELA THOMPSON: Thank you.

CHAIRMAN O'CONNELL: Suppose an officer was obviously drunk or obviously out of his mind and arrested you when you were doing nothing?

GREGORY F. STOUT: Gisske v. Sanders -- as you walk your dog at night on the street. Yes.

CHAIRMAN O'CONNELL: What do you do? Do you --

GREGORY F. STOUT: You submit.

CHAIRMAN O'CONNELL: Submit to the arrest. Go down and make bail. Get out ...

GREGORY F. STOUT: Yes. I think this is your duty. I mean - this business of a citizen having a right of self help or the right to resist to me is almost anarchical. A peace officer can be drunk, disorderly, stupid, insane, whatever you want to apply to him, but he is the law at that moment. I think it's the duty of the citizen to submit. He's got his remedies. This happened to my wife one time. She was driving along Park Presidio Boulevard and a drunken officer stepped into her car and said, "Drive me to a bar." Well, she drove him to a bar, but she also went right down to the police commission's office in San Francisco and filed charges. And this guy was set down for 90 days. Now, the citizen has a remedy, if he's aware of his remedies and wishes to enforce them, but to resist, I can't see. As an old law enforcement person, I don't see resistance frankly.

CHAIRMAN O'CONNELL: All right for you.

GREGORY F. STOUT: Said the wrong thing, didn't I.

PAMELA THOMPSON: We had a witness yesterday, Mr. Stout, who had just defended a case recently in which an officer came to answer a complaint of the landlady that there was too much noise in the apartment. And the situation, as he related it, was that the man agreed to turn the sound down but he didn't want to tell his guests to go home. Then the officer attacked him forcibly and this was the case on which he was complaining about this section.

GREGORY F. STOUT: I suppose it's a legitimate complaint. What do you do? If we're going to permit resistance - resistance of equal force to force - I submit that we're going to permit so-called on-the-street-settlements of situations that can lead and will lead inevitably to excesses on both sides. This is the thing that I'm concerned with. The situation that happened in San Francisco recently where an officer was literally disarmed and pinioned by a crowd and the so-called arrested person held a gun on him for 10 minutes. This is the sort of thing that just kills me to the extreme. I don't want these things to develop. I don't want the citizen to get the idea that he has the right to resist force with force. To me this is anarchical. This can lead to nothing but chaos, particularly in an urban area where you have a high concentration of population. If you had force against force situations out in the middle of somebody's back forty where hundreds of people don't get involved in it either mentally or emotionally, that's another problem. But inevitably in these situations, people choose up sides and somebody, I don't care who it is, is going to suffer whether it's law enforcement or the citizen or the collective. This is why I would oppose... I would submit to resistance, frankly.

CHAIRMAN O'CONNELL: Thank you, Mr. Stout.

GREGORY F. STOUT: Thank you, John.

CHAIRMAN O'CONNELL: Mr. Blease? Just so we can get an idea here... Captain Waldt, you wanted to testify. Did you... About three minutes? Okay. We've got a couple of members here who want to catch airplanes for the southland, so we're going to have to pick it up. All right go ahead, Mr. Blease.

Coleman Blease  
Representative  
Southern California Branch  
American Civil Liberties Union

COLEMAN BLEASE: I'd like to start out by making one or two observations of a more philosophical nature because it often is assumed that order and freedom are contradictory. And I think if you take the extremes, that's probably correct. Order in the extreme is some kind of totalitarian state and freedom in the extreme is anarchy. But when you get to the center part, the two are related in a very significant way. To use a rather obvious example, if you're traveling across the Golden Gate bridge you need - the order of the traffic rules, in order to have the freedom of making it across the bridge. So here, in this kind of situation, order and freedom are intimately related. I suspect that when you get to the core of a lot of problems between the problems of the power of the state and the freedom of the individual which is at the heart of a lot of discussion about our constitution and civil liberties and the like, that you're really presented with somewhat the same kind of problem. I say this because I



think too oftentimes it's assumed that those concerned with civil liberties and those concerned with law enforcement are necessarily on the opposite sides of the street. I don't want to leave that impression although too oftentimes, I think for partisan purposes, you may be shoved into taking a view which doesn't lend itself to relating the two.

Now, I think this can be seen more directly in the relation to a lot of current controversy about police procedures. I happen to think that a lot of the - our common problems can be solved, not necessarily by an increase of what we call power on the part of the police or its consequent decrease of what you might call merry freedom on the part of the individual. But it's resolved by viewing this as a mutual problem to be resolved. I think most of which can be seen as a problem that can be resolved by increasing the realization of both sides - in the case of law enforcement officers, by their training and awareness and sensitivity to the rights of the individual. And on the other hand the awareness of the individual to the problems faced by law enforcement and to the need of order and to the need of having a law enforcement officer have a sense of dignity and significance the same as the individual. Now, I think when the problem is viewed in this light that -- and I often hope that someday we might be able to be put in the position where our common goals are realized in the sense of a drive for increased standards for police, increased position within the community, increased remuneration, increased realization of their task and at the same time, in the course of this I would suspect an increased awareness on their part of the position they place - the role they play in relation to the whole.

Now, in terms of the Constitution of the United States, the Founding Fathers did a rather unique work of attempting to regulate in some ways the problems of power and the individual. They did it, first of all, by making sure in the Bill of Rights that we recognized that there were certain substantive and procedural safeguards against the exercise of power. They also set up a number of devices which they hoped would aid in giving vent to this. Certainly one of them was the notion of separation of powers and recognition that each of the major bodies of the government had their own duties and responsibilities with respect to this matter. But, I think that part of the problem here is the recognition that if our rights are to be meaningful and the powers are to be meaningful, that there has to be a meaningful way for these to be expressed and be clarified so that everybody knows what they are. There has to be an effective remedy for them.

Now, let me talk about the remedy side which is, I guess, more a consistent civil liberties concern than the other side - about how we handle problems of remedy in relation to a violation of the rights. And I would suggest that if these rights are to be meaningful at all, there has to be some way of enforcing them otherwise they

are mere admonitions on a piece of paper which have no more than some sort of admonitory position. And I think that our Constitution and Bill of Rights really has a role which is much more significant than that.

Now, a lot of the problem ... Let me bear down on a lot of - on the exclusionary rule and some of the problems that have arisen in that area. It seems to me that initially many of our problems here have arisen from the fact that so much of the law enforcement function in this area has been seen in the investigatory sense as proceeding from the arrest of the individual and focused upon the individual rather than some pre-arrest technique or investigatory situation leading up to arrest as the culmination of the whole process. Now, when you focus upon the individual, it becomes important to try and get admissions or confessions from him, it becomes important to focus upon the arrest. It becomes - the evidence seized in connection with it becomes important and all the whole - the whole sense of criminal procedure becomes highly accentuated.

If the process is deferred in the sense that the investigation precedes the arrest, that surveillance and gathering of evidence precedes rather than occurs simultaneously with the arrest or subsequent to the arrest, then a lot of ~~its~~ problems simply don't arise. Now, the practical side of this problem occurs, I think, by a stress on warrant procedure, because the warrant procedure really is a pre-arrest technique. It forces the gathering of evidence prior to the arrest, it forces the - it injects the magistrate between the policeman and the situation. And if you ask the problem, "How does the policeman tell?" Well, often times he can't, but here you have some guy who is at least supposed to be somewhat expert in the field of determining the more narrow or borderline situations so that when you go before - If the policeman has the advantage of the magistrate, he has that much additional assurance that what he is doing is correct in light of these -- of this difficult boundary between power and the rights of the individual.

Now, I think that we need to stress warrant procedure more. And I'm not convinced that this can be done by the methods that we've chosen in the past. In 1957, for example, in this state we expanded the grounds upon which a search warrant could be obtained within the meaning of Section 15 to 24 of the Penal Code. And the argument made at that time was that by making it easier to get search warrants that more of them would be used. I suggest - I would suspect that that has not occurred. And that what we need is something more like the old rule in the Troupiano case which has since been overcome that requires that an arrest warrant or search warrant to be obtained where practicable and that some sanction be adopted for failure to fulfill this in this area.

Now, I think also that when you - that there are a number of more obvious gaps in our criminal procedure that need remedy. For example, although there is a requirement that a person be arraigned, the area in between seems to be a somewhat no-man's land. There is no requirement so far as I know, that requires that an individual be booked within a reasonable period of time. That is that the point - the period of time between the arrest and the arraignment has no duties - there are no duties upon the officer with respect with what's to be done with the individual except that he has to allow him to make a phone call within three hours. But presumably the phone call could be made from a booth. It doesn't necessarily have to be made from the police station. Now, since it's an - since a certain - certain rights like bail, for example, and certain misdemeanor situations are dependent upon being present in the jail, at least the bail schedule doesn't go into effect except upon the authority of the custodial officer. It's important that he be there promptly if he's to make use of the important right of bail. Now, the same thing is true with a number of important rights which ought to be stressed at this --

ASSEMBLYMAN WOLFRUM: Do you have cases recently where there has been long delays between arrest and \*\*\*

COLEMAN BLEASE: You mean since the close of the session? The last session? No, I don't. I - I - there are numerous cases cited in the codes about long delays between arrest and arraignment. Numerous of them.

ASSEMBLYMAN WOLFRUM: Something in past history, but nothing in recent history in California.

COLEMAN BLEASE: I had no personal knowledge. I only have --

ASSEMBLYMAN WOLFRUM: Are you speaking academically now, then?

COLEMAN BLEASE: I am speaking highly academically in the sense that my personal experience doesn't reach into this field.

ASSEMBLYMAN WOLFRUM: Well, this is where you're losing me.

COLEMAN BLEASE: Well --

ASSEMBLYMAN WOLFRUM: You're saying that there is a long period of time between arrest and arraignment --

COLEMAN BLEASE: I am saying that - I am saying that there is no duty placed upon the arresting officer to do other than getting before the magistrate within the proper period of time.



ASSEMBLYMAN WOLFRUM: Well, that's what the law requires now, isn't it? Forty-eight hours?

COLEMAN BLEASE: That's right.

ASSEMBLYMAN WOLFRUM: Then --

COLEMAN BLEASE: Presumably they could drive them around for two or three days and bring him in before the magistrate when the time was up. Now, what's happened in between? Has he had an active access to counsel? Has he been effectively advised of his rights of silence? Other guarantees given to him effectively? I would suggest not. And I think it's been a common procedure as other people have related to me. I am sorry that the prior witness had to leave because he's one of them; where on occasion it has occurred in order-at least on the- in a situation where they wanted to clear up say a series of robberies, that they rode the guy around and then simply pointed out the various places and attempted to get him to confess to various robberies in order to clear up their list of crimes that were committed. Now, it seems to me that if rights are to be meaningful, and I think the most - some of the most meaningful rights that we have are the rights of silence, the right to counsel and these are for the most part in the practical situation, really most important at the beginning of - at the point between arrest and arraignment. In Los Angeles, for example, the annual reports of the Attorney General, Crime in California, I think reveal that most of the convictions in Southern California occur on something like the submission of the police report. What it admits to is an admission or a confession. Now, I'm not - not to say that not all those are justified, but I am saying that there might be a lot of those situations --

ASSEMBLYMAN WOLFRUM: Well, this is a question of choice of defense counsel, isn't it?

COLEMAN BLEASE: What?

ASSEMBLYMAN WOLFRUM: If he wants to submit upon the report?

COLEMAN BLEASE: No, there may - the fellow can - may have effectively really waived these things unless his rights are really brought home to bear.

ASSEMBLYMAN WOLFRUM: Well, at that stage of the proceedings, where he submits it to court on the police report, he certainly has the advice of counsel.

COLEMAN BLEASE: Yes, he has at that point. But supposing the admission was made during the time before he even had access to counsel, which is very frequently the case. I had one of those in

Los Angeles. Before he even saw anybody, the statements he made had done him in. I'm not saying that he shouldn't make those statements, but I am saying that he ought to be well aware --

ASSEMBLYMAN WOLFRUM: During the investigation, if he makes some statements to - relative to his participation in the crime, you mean these should be eliminated?

COLEMAN BLEASE: No, I'm not necessarily saying that. I'm saying - what I'm concerned with is that he be well aware of the fact that he doesn't have to make those statements. And if he does make those statements, those statements may be the very things that hang him. I think he ought to be aware of that.

ASSEMBLYMAN WOLFRUM: I think that we're getting down to a basic argument here as to what the function of the police are in this particular area.

COLEMAN BLEASE: That's right.

ASSEMBLYMAN WOLFRUM: Whether it's the gathering of evidence, for the presentation in court is a function of the police --

COLEMAN BLEASE: Oh, I would agree that's the function of the police. What I'm suggesting is that we --

ASSEMBLYMAN WOLFRUM: You're suggesting that we eliminate all these things.

COLEMAN BLEASE: No, I'm not at all. I'm suggesting that there ought to be effective ways of at least making the person aware of the fact that he does have rights. Now, let me give you --

ASSEMBLYMAN WOLFRUM: I've found very few in my experience who don't know that.

COLEMAN BLEASE: Oh, well, my limited experience, quite limited, show just the opposite. So-called hardened --

ASSEMBLYMAN WOLFRUM: Anybody that's been to the movie or watched TV knows that he doesn't have to say anything to incriminate himself.

COLEMAN BLEASE: Anybody who has been to a movie or watched TV, I'm pretty sure has a completely wrong notion of what his rights are.

ASSEMBLYMAN WOLFRUM: Or heard of the Fifth Amendment.

COLEMAN BLEASE: Certainly in the cases that I handled, these guys, that are supposed to be hardened cons didn't know which way was up. They've been told a lot of junk by some other guys in the back cell. But that didn't make it true, didn't make it the case.

ASSEMBLYMAN WOLFRUM: The best talkers are the three or four time losers.

COLEMAN BLEASE: They may be the best talkers, but they sure gave away the kitchen sink.

ASSEMBLYMAN WOLFRUM: I think that's what may be true.

COLEMAN BLEASE: What?

CHAIRMAN O'CONNELL: I think that's what Mr. Wolfrum meant by best talkers are the ones who do the most talking and do the best job of incriminating themselves or the more experienced criminals.

COLEMAN BLEASE: Well, I think it's important that they have access to counsel as soon as possible. I think it's important that we limit interrogation after the point of arrest. And the point here is - the central point I want to make, if there is a central point - and that is that the investigation ought to be, for the most part, completed insofar as it's possible prior to the arrest. That not simply - to the extent that's possible, it makes all the things that follow the arrest simply unnecessary.

ASSEMBLYMAN WOLFRUM: Well, I think this is done in many cases, but you'd have to agree that there are a great many cases where this cannot be done.

COLEMAN BLEASE: In some cases, it cannot be done. That's right.

ASSEMBLYMAN WOLFRUM: Probably the majority of the cases, it cannot be done.

COLEMAN BLEASE: I don't know about that. I really don't. I think it's, obviously in some cases, that's true. In other cases it's not. But I think that insofar as it's possible to view the situation in the light as I've expressed it, that we ought to attempt to safeguard these rights. Now, there is - just let me advance one simple kind of proposal that the committee might want to entertain and that is that there ought to be some system of advising people as to their rights. Now, this could - to add another piece of paper to all those pieces of paper that policemen now carry around - we might conceivably add a paper which in relatively simple terms and maybe in several languages would advise him of his right to silence, right to counsel, right to make a phone call which he would be handed.



I mean that's a fairly ... That's not done now. In many cases and especially if a person is a minority person who may not have - may not be familiar with English, it might be impossible for the police officer to advise him because he doesn't speak his language. Now, that kind of suggestion seems to me to be at least - merit certain consideration.

Now, I think we all ought to also entertain going a lot further than that. Mr. Stout mentioned the Mallory-McNabb type of rules which are based upon the notion that the individual when he's in confinement and especially with a confinement that exceeds the legal period of time that an admission or confession that occurs in the period of illegal detention, you might adopt a fairly automatic rule of exclusion with respect to that statement, for the reason that as between the police and the individual the possibilities of proving one situation or another are extremely - are completely outweighed on the side of the police. And his suggestion that all statements not made in the presence of counsel might be one that might be well entertained. At least if they're made in the presence of counsel, you can be assured that there is no coercion. You can be sure that they've been made freely and voluntarily.

Now, one or two last comments and I'll finish. I know there are others to follow. The Mapp case has been mentioned. I think I would tend to agree with Mr. Stout that substantially what he said will occur, that is that it will be incumbent upon us to follow federal procedure. I would add though that insofar as the state procedure is grounded upon a state constitutional provision that is not within the power of the Legislature to change that. That is the Legislature vis-a-vis our state constitution - it's in substantially the same position as they are vis-a-vis the United States Constitution. You cannot amend our state constitution by statute. Just as you cannot amend the federal Constitution by statute. And insofar as our state cases are grounded upon Article I, Section 13, our state due process clause, they are not amenable to change by statute. So that even though we may even have a higher floor in California in some situations than the federal which is a fourth amendment floor, it doesn't mean that the Legislature is free to change it.

I would like to express one other point since it was muddled this morning. That is, that we are talking about constitutional provisions and we are not talking about statutory provisions. That is, whenever you use the "legal", you're not merely referring to the constitution, you're also referring to acts of the Legislature. And therefore, the rule is not a rule of illegal evidence, the rule is a rule of unconstitutional evidence, both under the federal and state constitutions. And there we have to look to those constitutions and the courts in their interpretations see what those standards might be.

Now, I think there's a strong tendency if you look at the recent session of the U. S. Supreme Court the cases very carefully, to see that the U. S. Supreme Court is generally heading the direction of broadening the rights of the individual. You might take a look at the recent Silverman case relating to eavesdropping to see that from the time of the Olmstead case which said that wiretapping did not violate the Fourth Amendment up until the Silverman case. It had never been clear that you could - that the Fourth Amendment protected against seizures of intangible effects, that is, speech, for example - statements made. In fact the majority in the Olmstead case was rather careful to point out that the Fourth Amendment only protected against tangible things - houses, papers and effects in the physical sense. I think the Silverman case overrules that decision and means that the Fourth Amendment provisions are being expanded so that the notion of privacy will be expanded to include or at least to focus upon that which we are really focusing upon, not the tangible incidents of privacy but that mental state which we're really interested in. When we talk about a right of privacy we're not talking about, necessarily, the right of protecting a man's privacy but the right of protecting a man's personality and integrity and other certain more intangible values. This is at the core of it. I think insofar as the Supreme Court sees it as its function, sees an expansion of the Fourth Amendment, we can see eventually the overruling of the Olmstead case and the overruling of the Goldman case. And I think that it will not - as a matter of fact I think there's a majority on the U. S. Supreme Court now who would be of a mind, if an appropriate case arose, to say that electronic eavesdropping as such even without a physical trespass would be a violation of the Fourth Amendment and it's unconstitutional. I think we can look in that direction.

CHAIRMAN O'CONNELL: Thank you, Mr. Blease. Captain Waldt?

Larry Waldt, Captain  
Sheriff's Department  
County of Alameda and  
Chairman  
Professionalization Committee  
Peace Officers Research Association  
of California

LARRY WALDT: I do not have a prepared statement, however, I have made notes hoping that I will not be repetitious of previous testimony. I should hope that the several statements I have jotted down will be objective and not academic as a result of 15 years of experience of law enforcement. And I might state at the offset that several of the items which Mr. Blease thought should be matters made statutes are in effect in some departments. For example, in our department we have a policy that when a person comes into our custody, even though he may have been received by our department at the county jail or one of the police agencies with the county, we advise him of his telephone privilege and if he desires even though we may have



the knowledge that he conceivably might have made the telephone calls, we still do not deny him the privilege. And as a matter of fact, if the calls are local and he has no funds, we furnish him with the telephone service.

I think that we have all agreed on one thing, that crime has increased and I think we also agree generally in that there is no singular answer as to why crime has increased. I think we should also be fully aware, which some of us may overlook at times, that law enforcement as a whole and especially here in California has upgraded itself. And I think that the upgrading perhaps is due in part to the manner in which selection of personnel is made, the improved training and educational facilities, and also the adoption of the code of ethics, which you may or may not be aware of, which has been almost universally adopted throughout the state and which some of us adhere to in a very serious manner.

Now, one item which I think has contributed greatly to the professionalization of law enforcement which as a result has brought us better law enforcement, is the Commission on Peace Officer's Standards and Training which is very nebulous at this time, but I'm sure will be expanded and will even further improve law enforcement in California.

Now, in spite of this, crime has increased. And I think that as a result perhaps we might acknowledge that law enforcement cannot be singled out as being responsible for the increase in crime in some of the inferences that might have been presented. I think that we should also consider the fact that many of the inferences and allegations which are presented before this committee are isolated, hearsay in some cases, and what have you. And because of that, I think the committee should be aware, and I know they are, that legislation could conceivably be instigated that might even further handicap law enforcement from the standpoint of trying to decrease this continuous spiral.

I think it's awfully easy to make laws and then we get into the interpretation of what we actually meant to do and I think this is indicative by all of our opinions on our big cases. It's been said before we expect a \$550 a month patrolman to be able to make a decision at a moments notice that even our learned justices sometimes have difficulty at arriving at a decision, such as 4 to 3 and 5 to 4. So therefore, I think that we should, and the committee should, consider very seriously the source of these allegations because we do know as Mr. Coakley pointed out that sometimes the source is questionable. The information is questionable, it's not specific. But in our zealousness to do a good job of legislation and law enforcement, we are sometimes tempted to accept recommendations that perhaps the net result would be a defeat, in a sense, of better law enforcement. And I certainly would encourage the committee if it is within the scope of the committee to further consider how law enforcement might through enactment of legislation such as the Commission on Peace



Officer's Standards and Training expand it. I think that this is our answer -- the education and the training of peace officers, so that we will be better equipped to make these decisions as they arise. But this business of legislation that even makes it more difficult for the trained officer today to interpret ... We're not going to wind up with better decisions being made on the street, if we continue to have this problem confront us in which we cannot have an answer and our learned justices do not come up with conclusive answers.

CHAIRMAN O'CONNELL: Well, I think we can agree with you that the laws that the Legislature makes, which are the tools of law enforcement, ought to be as clear and unambiguous as possible. This is what we've been trying to do. The courts are the final arbiters of - and interpreters - of the laws the Legislature makes and if we give the courts laws which are clear and unambiguous and moreover constitutional, then the problem of the officer on the beat is going to be that much simpler. It's not an easy task and I think that it's understandable that no matter what laws we make, they are going to be subject to some interpretation. It will not always be an absolutely clear choice for the officer to make when he's about to - or when he's considering making an arrest. But, I'm sure that this committee is favorably disposed to improving law enforcement and the caliber of its officers. This committee did give a "do pass" recommendation to the peace officer's training commission bill in 1959 and some of us are a little disappointed that it took so long to get the program under way and that more hasn't been done with the program that we enacted.

LARRY WALDT: It was considerably watered down.

CHAIRMAN O'CONNELL: Yes. We're hopeful that more and greater use will be made of the program as it was enacted. If people concerned with law enforcement have any specific suggestions as to how that program might be amended to make it more effective we'd be very happy to entertain those suggestions.

LARRY WALDT: That's one of the difficulties that we face because whether you are aware of it or not, when the initial legislation was proposed there was great opposition from many circles. So called violation of home rule, etc. As a matter of fact, I think the passage of the bill was by a very narrow margin.

CHAIRMAN O'CONNELL: No.

LARRY WALDT: As I say, I may be misinformed on that. I don't recall the exact vote on it. But I do recall meeting with legislators, city and government officials and there was a great deal of opposition because they felt that the home rule would be violated even though they felt there might be a need for this. And the

interesting part - the most consistent opposition was from those jurisdictions which offered the least training and had perhaps the least desirable method of selecting their officers. It would seem they were doing a disservice to the people that they represented in their respective communities by not offering to them the best possible law enforcement officers they might obtain.

CHAIRMAN O'CONNELL: I think there might have been an underlying feeling that a program of this kind tended to - or might tend to raise the cost of maintaining police forces in some of our cities because higher salaries would have to be paid.

LARRY WALDT: Well, sometimes a small amount of money spent today can save a large amount of money at a later date.

CHAIRMAN O'CONNELL: Yes. Sure, I agree with you. Well, thank you very much, Captain.

LARRY WALDT: Thank you, sir.

CHAIRMAN O'CONNELL: Mr. Colley?

Nathaniel S. Colley  
Attorney at Law  
Sacramento, California and

Chairman  
Regional Legal Committee  
NAACP

NATHANIEL COLLEY: I suppose the only advantage in coming in very late is that I don't have to worry about whether I'm saying something that someone else has just said. If they have said it, I wouldn't know anything about it, but I promise to make it brief so I won't bore you with it if everybody has said the same thing. Well, I'd like to --

CHAIRMAN O'CONNELL: The unfortunate part for you is that you have a very small audience now, Mr. Colley.

NATHANIEL COLLEY: I was going to suggest that the committee might adjourn to some more appropriate place, also, but I wouldn't make that suggestion at this time.

CHAIRMAN O'CONNELL: Well, we'd like to have what you say on our record anyway so that the rest of the members of the committee who had to leave will be able to read it at some later date.

NATHANIEL COLLEY: I'd like to make a few suggestions as to how we might improve some of our police procedures, but I'd like

to more or less confine these to how we can eliminate some of the tendencies which result in what we have described as police brutality. First, I would extend the legal doctrine of respondeat superior to the relationship of policemen and the cities which employed them. It is not far short of ridiculous to say, for instance, that, if the policeman in the course and scope of his employment negligently shoots an innocent bystander, the city which employs him is not responsible. Yet, this seems to be the law. Likewise, if a policeman wrongfully would arrest the chairman of this committee because he thought the hearing might tend to a breach of the peace, the policeman alone would be liable and not the City of Sacramento. On the other hand, if an employee of a private person commits such a wrong, the aggrieved person would like the employer be responsible. The policy behind this rule is that if we make employers responsible, they, in turn, will apply pressures to make their employees act responsibly. I see no reason why a city should be exempt from this rule. Next, since police continue to arrest people who later mysteriously die in jail or turn up beaten the next day, I think that whenever a citizen is booked, a notation should be required to be made as to his physical condition. It would be more appropriate if a spot check could be made by a doctor. Cities keep a doctor available to examine accused drunk drivers and I see no reason why one could not be available to see that citizens are not thrown into a drunk tank in a state of physical injury or in a situation where they soon receive physical injury. The injured could give a doctor a history of any existing injury at the time he is brought in.

Finally, we must have a better method of processing claims of police brutality. Few citizens have any confidence in an investigation made by the chief of police on a charge that a sergeant has beat someone up in trying to induce a confession. Inevitably, the officer's word will be taken and just as inevitably he will deny the claim of brutality. Laymen will call this method of investigation the old whitewash. The answer could be in a police commission of independent citizens or it may have to be in a state agency modeled after the State Fair Employment Practices Commission. It might yet develop that the agency should be greatly broadened into a state commission for the protection of civil rights and liberties. In this event, its function would cover civil wrongs against all people. This idea seems worthy of exploration.

I have over the years as a practicing lawyer heard many charges of police brutality. But I know of fewer charges harder to prove than this one. That act seldom takes place in the light of day with fearless witnesses looking on. Thus, the citizen needs help for his own protection in bringing the charge to light and, of course, bringing the offender to justice. I might say that I had intended to prepare a rather lengthy statement to present on this particular thing, but unfortunately I have been engaged in a trial in Alameda County and I just returned about two o'clock this afternoon. But I



thought that I would come over anyway.

CHAIRMAN O'CONNELL: Thank you, Mr. Colley. When you first started to talk about this method of arbitrating questions involving police brutality, I could see an amendment to AB 801 coming right up a long time before you got around to it.

NATHANIEL COLLEY: Well, it might well be that something like this will have to be done. I have some doubts that even if we extend the doctrine of respondeat superior we'll get enough people who will take the trouble to file lawsuits against policemen in cities and bring this kind of thing to an end. But if we had some sort of independent agency to make investigations we might get far more done than we would otherwise. I see no reason why this kind of thing couldn't be extended to the Fair Employment Practices Commission by changing its name and broadening its functions.

CHAIRMAN O'CONNELL: I believe the Senate Judiciary Committee is presently considering the whole doctrine of sovereign immunity as a result of the Muscov decision and the legislation that was passed in the 1961 session establishing a moratorium on claims against governmental entities and we'll call that to the attention of the Senate Committee and ask them to consider --

NATHANIEL COLLEY: I was hopeful, for instance, in the Muscov case this would be reached. But then of course the Legislature set out to see that it wouldn't be reached. Well --

CHAIRMAN O'CONNELL: The Legislature established a two year moratorium to allow time to consider a program, if you will, of providing redress for injured people and balancing off the rights of the governing agencies of people to protect from the sweeping effects which were possible under the Muscov decision.

NATHANIEL COLLEY: Well, of course, I realize this committee isn't called to go into the Muscov decision, but the effects could not be more sweeping than negligence of public officers and agents. And if they had been sweepingly negligent then it appears that they should be responsive as a result of it just like any other individual. It seems to me that the sovereign, least of all, needs the protection of immunity because the sovereign and its agencies ought to be above reproach. And in fact, ought to be held to a higher standard than ordinary people.

CHAIRMAN O'CONNELL: Well, I'm inclined to agree with you, Mr. Colley, that some responsibility for negligence for employees ought to be assumed by the state and its political subdivisions. I think further that this assumption of responsibility ought to extend to the negligence in the torts generally of law enforcement people.

NATHANIEL COLLEY: And I think on the question of extending the responsibility of the - of a commission type of organization is strengthened by looking at what happens when suits are brought against policemen as individuals. Oh, about 11 years ago, I brought a suit against two policemen in Sacramento County on a charge of brutality and also on a charge of false arrest. The evidence was so overwhelming that the trial judge directed a verdict for the plaintiffs. The jury went out and deadlocked 6-6 on the question of whether they should return a verdict for the plaintiff even though the trial judge had directed them to return a verdict for the plaintiff. And after the case was over, the jury was discharged, they were asked, "Didn't you understand the direction of the court, that you had to return a verdict for the Plaintiff?" And some of them said, "Yes, we understood that, but we just felt that these poor policemen should not be saddled with a big judgement. If the city was responsible this would be different. They were doing what they did as employees of the city and why let the city out". "Why didn't you sue the city, Mr. Colley?" This is what they said to me. "Why didn't you sue the city and we would have had a different attitude toward this. But you're going after these poor people as individuals". Well, it didn't do me any good then to tell them that the city was not legally liable. I couldn't do anything about it.

CHAIRMAN O'CONNELL: All right. Thank you very much, Mr. Colley.

NATHANIEL COLLEY: Thank you for the privilege of appearing before you.

CHAIRMAN O'CONNELL: Is there anybody else who wishes to be heard? If not, we'll be adjourned.

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CHAIRMAN O'CONNELL: Oh, Mr. Fort.

ROBERT O. FORT: I have nothing to add. I'm here if there are any questions you'd like to ask about the Peace Officers Association. I don't think I have anything that - of any value. If you have any questions you'd like to ask --

CHAIRMAN O'CONNELL: I can't think of anything right now, Mr. Fort. Thank you. All right, we'll be adjourned.